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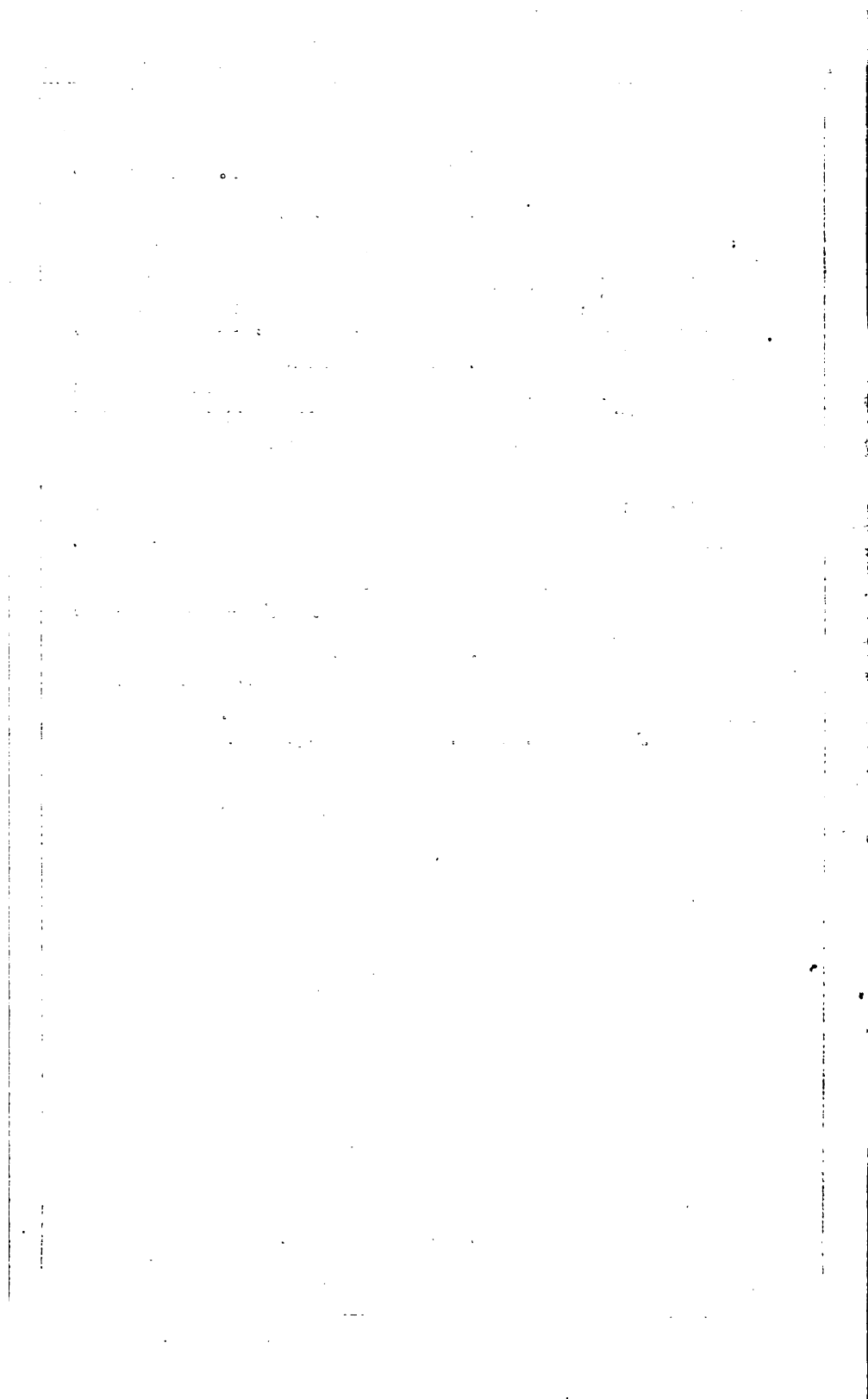
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AS BETWEEN THESE OFFICERS AND
THE PUBLIC.

A CONCISE INQUIRY INTO THE LIMITS OF EXECUTIVE
AUTHORITY AND THE REMEDIES FOR BREACH OR
EXCESS THEREOF.

BY

A. W. CHASTER

OF THE UNIVERSITY OF LONDON, LL.B. ; AND OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW.

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TO THE MEMORY OF
My Grandfather,
W. P. CHASTER,
And my Father,
J. W. CHASTER,
WHO DEVOTED MUCH OF THEIR LIVES
TO THE CAUSE OF
GOVERNMENT
“OF THE PEOPLE, BY THE PEOPLE, FOR THE PEOPLE.”

PREFACE TO THE FIFTH EDITION.

IN this edition the subject-matter has not only been brought up to date, but it has also been extended so as to include the executive law applicable to the United Kingdom and arranged so as, while strictly maintaining the general scheme of a record of executive power and liability respectively, to shew what powers appear to be properly exerciseable on behalf of the Sovereign and what are within the respective local jurisdictions. The general plan is (except where the local powers exerciseable in Scotland and Ireland respectively, exclusively appear) to state the law of England, including that of Scotland and Ireland, either in brackets or otherwise, by way of variation from the law of England, or by reference.

Part III. has been rendered much more simple and intelligible by the Public Authorities Protection Act, 1893, which, on the initiative of the Lord Chancellor, has, since the issue of the last edition, been placed on the statute book.

The author has to acknowledge the kindness of Professor Dove Wilson of Aberdeen in having been so good as to indicate the direction in which the law relating to Scotland was to be found. Both as regards the law of that country and of Ireland, it is hoped that the work contains no inaccuracy. He has also to acknowledge the assistance he has received from Mr. J. S. Henderson of the Middle Temple, Barrister-at-Law, in perusing the Scotch and Irish law and making valuable suggestions.

The author must express his heartfelt regret that his late brother, Mr. J. N. Chaster of the Middle Temple, to whose encouragement this edition is largely due, was not spared to see its publication.

1 NEW COURT, LINCOLN'S INN,
December, 1898.

PREFACE TO THE FIRST EDITION.

THE accurate exercise and performance of their powers and duties, respectively, by executive officers, is of the essence of good government.

Partly on account of their system of payment (which is based in some cases at least on results), and of a desire to distinguish themselves, and thus earn promotion, and partly on account of that imperfection which is inherent both in mankind and in all human institutions, there is, perhaps, at times a tendency among these officers, in their zeal for the service of the State, on the one hand, to exceed the authority with which the law has clothed them, and, on the other, to be forgetful of the obligations which are due from them to the public.

It is for those who may be in some measure, more or less, affected by such excess or breach of duty respectively, that the following pages have been collated.

5 NEW COURT, LINCOLN'S INN,
October, 1886.

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THE POWERS, DUTIES AND LIABILITIES OF EXECUTIVE OFFICERS

AS BETWEEN THESE OFFICERS AND THE PUBLIC.

INTRODUCTION.

AN executive officer, properly so called, is, I assume, an officer employed by the State or local authority to put into actual execution the laws, or some portion of the laws, of such State or authority as the case may be. Taking this as the definition upon which this work is based, it is a natural consequence that the following officers, all of whom come within the term "executive" in its wide signification, are not included within it. First, military and naval officers, who act under the orders of their commander, and who are employed actively to deal with those foes whom it is to our interest politically to force into submission. Secondly, judicial officers, whose duty it is to interpret the laws, statutory or otherwise, but who are not themselves personally engaged in putting the laws into active operation. Thirdly, those officers whose business it is to perform purely ministerial functions and none other, such as those in the ordinary clerical establishments of our great public departments and the like, and who never, under any circumstances, come into collision, in their official capacities, with any member of the public.

Having thus positively and negatively determined shortly what I mean in this work by the term "executive officer," I would observe that the powers which are exercised by these men, when considered in the aggregate, are enormous. They in fact, carry on between them the whole business of active government, both imperial and local; and when we remember that every single case, either of excess of power or breach of duty towards any member of the public, contains within it as its kernel the all-important questions of the rights and liberties of the people, it will be seen that it is impossible to over-rate the necessity of closely scrutinising their labours. Mr. Dicey, in his work on the Constitution, in this connection says as follows: "Unintelligent students may infer that the law of the constitution is to

be gathered only from notorious judgments which embalm the results of grand constitutional or political conflicts. This is not so. Scores of unnoticed cases . . . touch upon or decide principles of constitutional law. Indeed every action against a constable or collector of revenue enforces the greatest of all such principles, namely, that obedience to administrative orders is no defence to an action or prosecution for acts done in excess of legal authority."

It is impossible, having regard to the fallibility of human nature and the system of administration, to suppose that these officers are invariably in the right, or even to credit them on all possible occasions with purity of motive. Over-zeal for the public service and individual interest will, in spite of all precautions, from time to time exhibit themselves. It is against such exhibitions that this work is mainly directed. Hitherto there would appear to have been no direct exterior check upon these powers, and the natural tendency therefore is—no matter how carefully any system may be administered—not only to exalt them as between the officers and the public, but possibly also for them by undue exercise to become a source of danger to the community.

It is for these reasons that this work has been prepared. Its object is to furnish a treatise from which may be ascertained what these officers have the power to do, and what not to do, as against any member of the public, and what remedies are pursuable in case they have either exceeded their power or fallen short of their duty to the individual. It is hoped, therefore, that it may prove to be of interest and value.

The liberties of the people have been purchased with the blood and treasure of our ancestors, and have been maintained by the labours of thousands of good men who have preceded us. To preserve those liberties intact is both the right and duty of us all. That this work may, in some humble degree, minister to that end, is the prayer of the author.

PART I.

THE KING A PARTY.

1. WARRANTS AND ORDERS.

A WARRANT may be defined as a written authority under the hand and seal¹ of some Court, or judicial or other officer authorised by law to issue the same, commanding the person or persons to whom it is addressed to arrest or detain, or produce or release, the body, or to search the premises, or seize or levy, or suspend execution on the goods or lands of some person named therein.²

In every instance save those of warrants of superior Courts at common law,³ viz., the Parliament, the High Court, and those of Assize and Arches,⁴ the cause of issue must appear on the face thereof; and where the process is in contempt, the period of detention be specified.⁵

Warrants may therefore not improperly be regarded as of two kinds, namely (1) those issued by superior Courts according to the course of the common law, and (2) those of inferior Courts at common law and of any Court or officer under statutory jurisdiction.⁶

The distinction between them, although rather a nice one, is important from the point of view of the liability of the officer entrusted with the execution. The principle may be thus expressed: Whereas, under a warrant of the first kind, the presumption is that the Court from which it issues had jurisdiction to order the particular thing or things to be done, no matter what the order may be, so as to throw the *onus* of proving no jurisdiction generally on the party attacking it; in the case of a warrant of the second kind, the presumption only extends to the matter actually appearing on its face. But, in either case, if on investigation it be found that there was no

¹ Those of superior Courts are sometimes not sealed.

² Any warrant which purports to relate to an unknown person or to an offence not yet committed, is void: *Leach v. Money*, 19 St. Tr. 1001; *Entick v. Carrington*, *ib.* 1030; *Wilkes v. Wood*, *ib.* 1153. The only exceptions are search warrants which are generally directed against premises and not against persons; and see *Hutchings v. Reeves*, *post*, p. 87, and 57 & 58 Vict. c. 27, s.

11. [In Scotland general warrants are void except in revenue cases or pointing of the ground. 1690 c. 13.]

³ *Burdett v. Abbott*, 14 East 1; *In re Fernandez*, 10 C. B. 1; *The Sheriff of Middlesex*, 11 Ad. & E. 273.

⁴ See the judgment of Brett, L.J., *Dale's Case*, 6 Q. B. D. 455.

⁵ 2 Inst. 62.

⁶ See the judgment of Parke, B., *Gossett v. Howard*, 10 Q. B. 452 *et seq.*

jurisdiction, being beyond the scope of the powers delegated to the Court or officer issuing it, the warrant is bad, and no justification to the officer who executes it. "The rule for jurisdiction is that nothing shall be intended to be out of the jurisdiction of a superior Court but that which specially appears to be so, . . . nothing shall be intended to be within the jurisdiction of an inferior Court but that which is expressly alleged."¹

With regard to orders, they are to be divided into two classes, namely (1) those which are similar in form and in regard to the principles of law applicable thereto to warrants, and may therefore not improperly be classed with warrants, and (2) those which have no similarity to warrants, but constitute merely the relationship of principal and agent between the person or body issuing and the person executing them.

As to orders of the first kind, it has been laid down that in so far as the jurisdiction to make them must appear on the face thereof, the rule is equally applicable to them as it is to warrants,² and here it is to be observed that where orders are made verbally by Courts of record,³ they are presumed to be in writing, "for there is or ought to be a record of such order".⁴

As to orders of the second kind—those which constitute merely the relationship of principal and agent, they fall into a different category. They will be found discussed in separate chapters in Part II.

The authority of every officer is dependent on the validity of the proceedings.⁵

[As to Scotland, the law appears to be practically the same, and therefore although this arrangement is not strictly true as to that country, it is for the sake of uniformity maintained throughout this work.]

Again, both warrants and orders (as in fact also do inherent powers) range themselves into two categories, which may sufficiently accurately be described as (1) those to which the king is a party, and (2) those to which the king is not a party. "The phrase 'where the king is a party' is not a correct statement of the law. The question is whether the process be issued at the instance of a private person in the assertion of a private right, or at the instance of a public authority in the assertion of a public right, where the public weal is interested in the execution of it".⁶

This description appears to tally (so far as concrete can with abstract law) with that given by modern writers in jurisprudence of those absolute duties which the individual owes to the State, those

¹ *Peacock v. Bell*, 1 Saund. 74; *Taylor v. Clemson*, 2 Q. B. 1081; *Harrison v. Wright*, 13 M. & W. 816; Com. Dig. Pl. 3 M. 24, and see Part III., post.

² *R. v. Hulcott*, 6 T. R. 588.

³ This includes Quarter Sessions.

⁴ *Per Parke, B., Watson v. Bodell*, 14 M. & W. 70.

⁵ *Ex parte Page*, 17 Ves. 59; *Cooper v. Asprey*, 3 B. & S. 932; 36 L. J. Q. B. 209.

⁶ *Per Att.-Gen., arg. Burdett v. Abbott*, 14 East 116.

which answer to *natural* rights, *i.e.*, those rights which are essential to man's existence in society; as distinguished from those relative duties which correspond with those rights which are the creatures merely of positive law, and of which it has been said that "when they have not the ethical sanction which is derivable from the laws of human life, as carried out under social conditions, they have no sacredness and may rightly be challenged".

It must not be supposed that this is in our law a modern distinction. On the contrary it carries us back to Saxon times and appears to be coeval with the establishment of the kingdom, and to be based on the fact that upon that establishment the local authorities surrendered into the hands of the king the execution of such part of the law as was necessary for the maintenance of his kingdom and that only.¹

The distinction between *mala in se* and *mala quia prohibita* is practically identical.²

The first point which arises for consideration in regard to the execution of warrants and orders to which the king is a party, is as to the amount of force which may be employed for that purpose. And it seems quite clear that *any* degree of force may be resorted to which is *necessary* to carry the execution into effect, the *onus* of proving such necessity resting on the officer who resorts to it.³ Lord Ellenborough, C.J., in the case last cited, adverting to the allegation in the defence that the employment of the military was necessary to assist at the execution of a warrant of the Speaker, says: "Now what application has the military force to the entry? None at all. Not that it is not competent to use military force, or any force which may be necessary for the execution of a warrant of this kind; the degree and quality of the force must vary according to the exigency of the case. The first duty of the officer who is entrusted with the execution of process is to take care that it is executed effectually and with as little injury to the individual or to the public as may be." And in that case evidence was tendered and admitted to show the danger and difficulty of executing the warrant by force against the plaintiff in his own house without the aid and protection of the military.⁴

When it is necessary to resort to the expedient of employing the military, that force must act under the direction of the civil magistrate.⁵

In regard to warrants of the High Court, the duty of executing which is imposed on the sheriff, it is laid down that if he finds any

¹ See the charter of Hen. I., Rymer 1, p. 12; *Leges Hen. Primi* and Maine's and Stubbs' works *passim*. *omne per quod pervenitur ad illud*, 5 Rep. 115 b.

² 1 Bl. Comm. 58. As to the right of resistance see *Sacheverell*, 15 How. St. Tr. 1, 202. ⁴ *Burdett v. Coleman*, 14 East, 188. [The Scotch law is the same. Campbell's *Law of Citation and Diligence*, cap. xvi.]

³ *Burdett v. Coleman*, 14 East 190. ⁵ Opinion of Att.-Gen., 65 Com. Jour. 264; Hans. Deb. xvi., 257, 454 h. *Quando aliquid mandatur, mandatur et*

resistance in such execution he shall take with him the power of the county and shall go in proper person to do execution, and may arrest the resisters and commit them to prison.¹

The next point is as to breaking doors. In *Semayne's Case*,² it was held that: (1) In all cases where the king is a party the [officer] (if the doors be not open) may break the party's house either to arrest him or to do other execution of the king's process if otherwise he cannot enter. But before he breaks it he ought to signify the cause of his coming, and to make request to open the doors. (2) The house of any one is not a castle or privilege but for himself, and shall not extend to protect any person who flies to his house or the goods of any other which are brought or conveyed into his house, to prevent a lawful execution, and to escape the ordinary process of law; and therefore in such cases after denial on request made the [officer] may break the house. But he does this at his peril, for if it turn out that the defendant was not in the house, or had no property there he is a trespasser.³ This protection which the law casts around dwellings is confined to dwellings only and does not extend to out-houses.⁴

After an escape from custody a man's own house or that of a stranger is no sanctuary, and may be broken after notice of the purpose and demand of admission and refusal.⁵

According to the opinion of the Attorney-General above cited, this breaking is limited to the daytime, which means presumably exclusive of night and twilight;⁶ but in treason or felony it seems it may take place at any time.⁷

Having obtained admission the officer may break inner doors,⁸ whether the defendant be therein at the time or not.⁹ He may also break out in order to complete the execution.¹⁰ Although the officer may force an entrance, he is not authorised in remaining in the house more than a sufficient time to execute the warrant, and in case of an arrest, if the party be from home he is not justified in there awaiting his return.¹¹

Under such a warrant execution on a Sunday is valid,¹² and it seems that an officer of the law in executing process of this kind is not limited at common law to any time of the day or night.¹³

¹ 50 & 51 Vict. c. 55, s. 8 (2). This power extends to the under-sheriff: *Dalt.* 104. The duties of the *posse com.* in these cases are of an active nature: *Miller v. Knox*, 6 Sc. 1, 2 Hen. V. st. 1, s. 8. [The Scotch law is the same. *Camp. ubi. sup.*]. In Ireland the power is at common law.

² 5 Rep. 91. See *Burdett v. Abbott*, 14 East 157; 5 Dow. 165. [The Scotch law is the same. *Bell's Dict.*, 19 & 20 Vict. c. 56, s. 34.]

³ *Johnson v. Leigh*, 1 Marsh 565; 6 Taunt. 246.

⁴ *Brown v. Glenn*, 16 Q. B. 257.

⁵ 1 East P. C. 824.

⁶ 3 Inst. 63; 4 Black. 224.

⁷ 1 East P. C. 824.

⁸ *Lee v. Gansell*, Cowp. 1; Lofft. 374.

⁹ *Ratcliffe v. Burton*, 3 B. & P. 223.

¹⁰ *Pugh v. Griffith*, 3 N. & P. 187; 7 A. & E. 827. [S. Hume ii., 76.]

¹¹ *Howard v. Gossett*, C. & M. 382.

¹² *Ex parte Whitchurch*, 1 Atk. 55, and as to warrants of justices in indictable offences, see 11 & 12 Vict. c. 42, s. 4.

¹³ *Per Campbell, C.J.*: *Brown v. Glenn*, 16 Q. B. 257.

There is no privilege from arrest in these cases.¹ Ambassadors, however, and their servants, if the servant be not carrying on business, although a British subject,² are protected by 7 Anne c. 12, s. 4. Arrest in such cases is a misdemeanour.³

But where an ambassador or a person having the same privilege is guilty of what in another would be treason, it appears that he may be arrested and his papers seized, and that he may be sent out of the country,⁴ and in the case of a non-diplomatic servant guilty of an offence, there is apparently no privilege.⁵

When a warrant is given to a defendant for his perusal and he refuses to return it, it appears that the officer has a right to take it from him, and even to coerce his person to obtain the possession of it, provided he use no more violence than is necessary to effect that purpose.⁶ And the taking away of such a warrant, even if not recovered, does not affect the validity of the execution.⁷

The production of a warrant is not apparently unless demanded a condition precedent to its execution.⁸

[In Scotland if the officer be not known, he should have on his blazon and show his wand of peace.⁹ In criminal proceedings, he must be in possession of the warrant when apprehending a party, or in pointing and caption. He should inform the party that he has it, but he is not bound to give it up.¹⁰]

Warrants of superior Courts, unless restricted by what appears upon their face, extend all over the kingdom in which issued.¹¹

1. OF SUPERIOR COURTS AT COMMON LAW.

THE SERGEANT AT ARMS (LORDS).

This officer is employed by the House of Lords to execute its orders against persons committed for contempt.¹² The order of the House is signed by the Clerk of the Parliaments, and is the authority under which the officer acts.¹³

The order usually requires the sergeant to take into custody the person named therein, and to bring him to the bar of the House.

¹ *In re Freston*, 11 Q. B. D. 545; *Long Wellesley*, 2 R. & M. 639; *Lechmere Charlton*, 3 My. & C. 354; *Gent-Davis v. Harris*, 40 Ch. D. 190; 58 L. J. Ch. 162; 60 L. T. 355; 37 W. R. 151. [*S.*, *Fraser v. Nicholl*, 2 D. 1254.]

² *Macartney v. Garbutt*, 24 Q. B. D. 368; *Parkinson v. Potter*, 16 *ib.* 152.

³ See *post*, p. 209.

⁴ *Wheaton, Int. Law*, 2nd ed., 285.

⁵ *Gallatin, Hall Int. Law*, 3rd ed., 175. Servants must be registered at the Foreign Office: 7 Anne c. 12, s. 6.

⁶ *R. v. Milton*, 3 C. & P. 31.

⁷ *R. v. Bailey*, L. R. 1 C. C. 347; 41 L. J. M. C. 61; 12 Cox C. C. 129.

⁸ *R. v. Howarth*, 1 Moo. C. C. 207; *R. v. Chapman*, 12 Cox C. C. 4; *Mac-kalley*, 9 Rep. 69; *Hill v. Roche*, 8 T. R. 188.

⁹ *Scott v. N. Eng. Bank*, xvii. D. 292.

¹⁰ *Jamieson v. Main*, 5 Mur. 122; *Hume* ii, 79, 391.

¹¹ 4 Bl. Comm. 291. [Same with Courts of Session and Justiciary, S.]

¹² In case of committal of a member the order goes to Black Rod. *Macqueen* H. L. 68.

¹³ *May's Parl. Prac.*, 10th ed., p. 69.

The order of the High Court backed by the Lord Chancellor to arrest a person under attachment on a return of *non est inventus* by the sheriff, or to obtain the custody of a ward of Court is directed to this officer, but is seldom now issued.¹ In the first case it appears that the defendant is not entitled to release without a certificate from the sergeant that his fees have been paid,² but it is believed that all the sergeant's fees have been abolished.

As has been above stated, a verbal order of the Lords to this officer is tantamount to a warrant.³

THE SERGEANT AT ARMS (COMMONS).

The warrant of the Speaker of the House of Commons is addressed to this officer. The duty of the sergeant is to take into custody the person named therein and to detain him during the pleasure of the House. The practice is to require the offender to attend at the bar to be discharged on payment of the fees, which are in the nature of a fine.⁴ He cannot, however, be detained in any case after the pro rogation.⁵

As has been above pointed out, a verbal order of the Speaker amounts to a warrant.⁶ When the Speaker is accompanied by the mace, he has power to order persons into custody for disrespect or breach of privilege committed in his presence.⁷

THE SHERIFF.

The warrants (or, as they are usually called in this case, writs) of the High Court, save that issued on a committal for contempt, are directed to this officer. He is bound to enter a liberty or franchise when the writ contains the *non-omittas* clause. They are as follow :—

Attachment.—This writ issues to arrest for a contempt of Court, where the contempt is, of a criminal nature such as doing something to prevent the course of justice. It need not necessarily be indictable.⁸ It is considered as issued on the first moment of the day of issue,⁹ and must be indorsed with a recital of the particular contempt.

The duty of the sheriff is to take the defendant and keep him in custody, so that he may have him in Court at the return of the writ.

¹ Braithwaite's Pr. 286, 288. See *In re an Infant*, 64 L. T. 732; *G. v. L.*, 1891, 3 Ch. 126.

² Cons. Ord. xxx., r. 9.

³ *Ante*, p. 4.

⁴ 82 Com. Jour. 397; 87 *ib.* 365; 97 *ib.* 240; 106 *ib.* 289. The fines are now paid into the Fee Fund, and are not received by the sergeant.

⁵ May, p. 89.

⁶ *Ante*, p. 4.

⁷ May, p. 85. The House of Commons is not strictly a superior Court,

although its warrants are construed in like manner. This will appear *infra*, p. 151.

⁸ *O'Shea v. O'Shea*, 15 P. D. 59; *Ex p. Ashwin*, 25 Q. B. D. 271; Order xlv. For the practice in attachment see *In re Evans*, 1893, 1 Ch. 259, and *Harvey v. Harvey*, 26 Ch. D. 644; 51 L. T. 508.

⁹ *Smallcombe v. Buckingham*, Carth. 419. See *Clarke v. Bradlaugh*, 8 Q. B. D. 63.

The property of a defendant may be taken in execution notwithstanding an attachment.¹

For the fee payable, see *post*.²

[In Scotland the analogous mode of vindicating the authority of the law, though but rarely resorted to, is by warrant to imprison.³ The corresponding officer is the messenger-at-arms, but sheriff-officers may be authorised to carry out the judgments of the Court of Session.⁴ The messenger-at-arms is always described as "sheriff in that part".]

Bench Warrant.—This warrant is issued by a judge of the High Court to bring before him any person charged with felony,⁵ or by a judge of assize in case of felony or misdemeanour.⁶

Capias Utlagatum.—This writ, which is practically obsolete, issues in cases of outlawry, and requires the sheriff to take the defendant and have him in Court on a certain day.⁷

Contumace Capiendo.—This is employed for the attachment of a contumacious clergyman, and is issued either with or without proclamations.⁸ The duty of the sheriff is to take the defendant and keep him in custody pending the order of the Court. The writ must be brought into the Court of Queen's Bench, and there, in the presence of the justices, be opened and delivered of record to the sheriff.⁹

[In Scotland such a matter is not dealt with by the Courts of Law¹⁰. In Ireland there is no establishment.

Extent.—This writ is the one employed by the Crown to recover a debt due to itself and is called an extent in chief. Under it the debtor may be taken and imprisoned, the Debtors' Act, 1869, which abolished imprisonment for debt not extending to those at the suit of the Crown.¹¹ Arrest is not now, however, usually resorted to.¹²

"The sheriff is authorised to take on one writ the person, goods, lands and debts" of the debtor.¹³ All goods and chattels except necessary victuals of himself and family, and oxen and beasts of the plough,¹⁴ including those conveyed away fraudulently to defeat the execution¹⁵ and specialties¹⁶ and concurrently freehold estate¹⁷ and that vested in trustees,¹⁸ an equity of redemption,¹⁹ and an equitable

¹ *Roberts v. Ball*, 1 Jur. N. S. 585; *Hide v. Pettit*, 1 Ch. Ca. 91; *Wells v. Gibbs*, 3 Beav. 399.

² Page 182.

³ *Murray v. Bisset*, 15 F. C. 627; *Leys*, 13 R. 1223.

⁴ *Robertson*, 20 R. 712.

⁵ 1 Ch. Cr. Law 36.

⁶ *Ib.* 389. [Circuit Courts, S., have all the powers of the High Court of Justiciary. Hume ii., 80].

⁷ The writs of *capias ad respondendum* and *exigent* are ancillary to this writ.

⁸ See 55 & 56 Vict. c. 32, s. 7.

⁹ *Dale's Case*, 6 Q. B. D. 376.

¹⁰ 26 & 27 Vict. c. 47.

¹¹ *In re Smith*, 2 Ex. D. 47.

¹² *R. v. Kinnear*, 3 Price 566; *R. v. Plan*, *ib.* 94.

¹³ Chit. Prerog. 262, 264.

¹⁴ West, *Extents*, p. 172.

¹⁵ *Ibid.*, p. 115.

¹⁶ *Ibid.*, p. 171.

¹⁷ Harbert, 3 Rep. 12.

¹⁸ *Ibid.*

¹⁹ Wat., 2nd ed., 367; *R. v. De la Motte*, 5 R. R. 714.

mortgage by deposit, if there is reason to believe that the mortgagee knew of the claim of the Crown,¹ may be seized, and so may leaseholds either as goods or lands.²

As to what cannot be taken, this includes goods pawned or pledged or demised or lent prior to the *teste* of the writ for a term certain, during the term or wherever a third person has a lien as an agent or factor or otherwise³ until such lien is satisfied.⁴ And it is the same with a sum of money payable on a negotiable instrument not arrived at maturity,⁵ and with property vested in trustees for a bankrupt,⁶ or assigned to creditors without fraud.⁷

As to lands, where a judgment has been obtained against them before the commencement of the Crown suit, whether an *elegit* thereunder has been sued out or not, they are not seizeable,⁸ nor are copyholds,⁹ nor those vested in a purchaser or mortgagee.¹⁰

Under an *extent* against partners the rule is the same as that under a *fi. fa.*¹¹

An appraisement must be made by a jury summoned for the purpose.¹² And on the return of the inquisition a *venditioni exponas* issues to sell the effects to the amount of the debt.

Extent in aid is given to a Crown debtor to recover a debt due to him.¹³ *Diem clausit extremum* is the writ under which a Crown debt is recovered from the estate of a deceased debtor. It is followed by a *venditioni exponas*.

Where writs of the subject and the Crown concur, that of the Crown takes priority so long as that at the suit of the subject remains unexecuted,¹⁴ "in other words, until the property in the goods is changed".¹⁵ And this priority extends as against the landlord for rent due,¹⁶ and also to growing crops.¹⁷ Laches of the officer does not affect the right of the Crown.¹⁸

And where the Crown has a *lien*, as under the excise laws,¹⁹ it will override that of the subject.²⁰ It is, however, only commensurate with the interest of the debtor,²¹ but can only be discharged by an actual *bona fide* sale.²² The fees payable are stated *post*.²³

¹ *Broughton v. Davis*, 1 Price 216; *Casberd v. Att.-Gen.*, 1 Dan. 238.

² Wat., p. 361.

³ *R. v. Lee*, 6 Price 369.

⁴ West, p. 116.

⁵ Wat., p. 369.

⁶ *R. v. Marsh*, McLel. & Y. 259.

⁷ West, p. 115.

⁸ West, p. 160.

⁹ *R. v. Ld. Lisle, Parker*, 195.

¹⁰ 18 & 19 Vict. c. 15, s. 11; and see *R. v. Lambe*, McLel. 402; 13 Price 649; and 28 & 29 Vict. c. 104, s. 48; and 29 & 30 Vict. c. 39, s. 42; 1. 7 & 8 Vict. c. 90, s. 11; 11 & 12 Vict. c. 120, s. 13; 34 & 35 Vict. c. 72, ss. 10-12.

¹¹ *R. v. Sanderson*, Wight 50; and see *post*, p. 69.

¹² West, p. 115.

¹³ West, p. 22. See 57 Geo. III. c. 117.

¹⁴ *Per Macdonald, C.B.*: *R. v. Wells*, 16 East 278, n.

¹⁵ *Per Chitty, J.*: *Att.-Gen. v. Leonard*, 98 Ch. D. 626; 23 L. T. 71; *Grove v. Aldridge*, 9 Bing. 428.

¹⁶ 8 Anne c. 14, s. 1; *R. v. De Caux*, 2 Price 17; 1. 9 Anne c. 8, s. 1.

¹⁷ 56 Geo. III., c. 50 (E).

¹⁸ *R. v. Renton*, 2 Ex. 220.

¹⁹ *Att.-Gen. v. Warmesley*, 12 M. & W. 179; 13 L. J. Ex. 66.

²⁰ 7 & 8 Geo. IV., c. 53, s. 28; 44 Vict. c. 20, s. 24.

²¹ *R. v. Topping*, McLel. & Y. 544.

²² *Att.-Gen. v. Trueman*, 11 M. & W. 694; 13 L. J. Ex. 70.

²³ Page 181.

[In Scotland this writ has been abolished, and an extract decree is a sufficient warrant to any messenger-at-arms to execute charge, arrestment and poinding in terms thereof.¹ He may recover the amount and take payment thereon,² and may arrest property in the hands of a debtor to the Crown debtor.³ He may charge the debtor to pay within a certain number of days,⁴ and at the expiration thereof may "poind the whole moveable effects without exception of such Crown debtor, including bank notes, money, bonds, bills, crops, stocking and implements of husbandry of all kinds in or towards payment of the sums of money therein mentioned".⁵ This does not affect what is not truly the debtor's property,⁶ the criterion being the completion of the real right.⁷ The poinding is to be in the ordinary form,⁸ except that poinded effects may be taken possession of, and if there be no offerer at the sale the officer may retain them on behalf of the Crown.⁹

The extract and execution of charge may be registered within a year and day, and thereupon a warrant to imprison may issue.¹⁰

The sheriff-clerk may be authorised to seize and detain the books of account and other books and papers of the debtor,¹¹ and the effects of a deceased debtor may be attached by arrestment or poinding.¹²

The priority as to moveables is as in England. But 6 Anne c. 26, which established the Court of Exchequer, excepted heritable property. Accordingly here, in competitions between the diligence of the Crown and that of the subject, the preference is determined by the same rules as regulate competitions between subjects.¹³

As to landlord's hypothec, it is not available against the Crown, and even after sequestration of the effects by the landlord and a warrant to sell, there is no pledge thereby created in favour of the landlord, and the Crown will be preferable if its claim be made before the sale of the effects be reported and the landlord's process finally closed, until which time there is not a judgment in the sense of the English law.¹⁴ Mercantile sequestration under the Bankrupt Act has no effect, nor is a discharge under that Act effectual against the Crown.¹⁵

By the above Act, which abolished writs of extent, it is provided that nothing therein should affect the preference of the Crown in competition with other creditors, and in all questions of preference or competition, the execution of any charge at the instance or on the behalf or for behoof of the Crown, and in the case of deceased Crown debtors to whom no such charge has been given in their lifetime, the execution of any arrestment or poinding at the instance, etc., of

¹ 19 & 20 Vict. c. 56, s. 28.

² S. 29.

³ S. 30.

⁴ S. 31.

⁵ S. 32.

⁶ *Barnet's Crs. v. Murray*, Elchies' notes 16 and 400.

⁷ *R. v. Lambton*, 5 Price 428; *R. v. Cotton*, Parker 112.

⁸ *Post*, p. 131.

⁹ 19 & 20 Vict. c. 56, s. 32.

¹⁰ Ss. 33, 34.

¹¹ S. 35.

¹² S. 36.

¹³ *Post*, p. 131.

¹⁴ *Robertson*, M. 7891.

¹⁵ 19 & 20 Vict. c. 79, s. 148.

the Crown, shall be deemed to be equivalent in all respects to the *teste* of a writ of extent according to the existing law and practice.¹

The sanctuary afforded no protection,² and the Crown will not be prejudiced by the neglect or omission of its officers.³

Levari Facias.—This writ issues against the inhabitants of a township or a Crown debtor, on conviction and fine.⁴

In the latter case, where there is imprisonment, the writ may issue before the expiration of the term of imprisonment.⁵

If the debtor's goods be *bona fide* sold, the claim of the Crown will be defeated unless there be a *lien*, as in the case of duties of excise.⁶

Restitution.—This writ, which is only granted where the party cannot be restored by the ordinary law,⁷ is now limited to convictions on indictments for forcible entries into and detainers of hereditaments and premises.⁸ When used to restore a party out of possession where the indictment is quashed, it is called re-restitution.⁹

THE TIPSTAFF.

Warrants and orders of committal of the High Court are delivered to this officer for execution, and, as has been already seen, where the order is verbal, it is of equal force with a warrant.¹⁰ The contempts here are of a criminal nature.¹¹

Superior Courts have power to punish by fine and imprisonment for contempt, whether committed in the face of the Court or not.¹²

The duty of the tipstaff is to arrest the defendant, and deliver him over for detention to the gaoler. The fee payable on an arrest is £1 1s., together with reasonable charges for travelling, etc.

[As to Scotland the corresponding officer is the macer. Every Court has power to punish summarily disorders or acts of contempt, when sitting. Where it is indirect it should be brought under notice by complaint of the public prosecutor.¹³]

In Ireland the Assize Court has all the powers of the High Court.¹⁴

¹ C. 56, s. 42.

² Ersk., bk. iv., tit. iii., s. 25.

³ *Micklam*, 22 D. 1427: *Miller's Trustees*, 11 R. 1046; 1600, c. 14.

⁴ I. see 1 Vict. c. 54, ss. 6, 8.

⁵ *R. v. Woolf*, 2 B. & Ad. 609; 1 Chit. 428.

⁶ *Att.-Gen. v. Ford*, 8 Price 364, and see *supra*.

⁷ 2 Lill. Abr. 473.

⁸ *R. v. Williams*, 4 M. & Ry. 471; *R. v. Hake*, *ib.* 483.

⁹ *R. v. Jones*, 1 Str. 474. [A similar writ appears to be used in S. in a more extended sense.]

¹⁰ Page 4.

¹¹ For the practice on committal see *In re Evans*, *ante*, p. 8.

¹² 4 Black. 285, and see *Van Sandau v. Turner*, 6 Q. B. 773.

¹³ *Macdonald, Cr. Law*, 406; *MacKay's Pr.*, i., 244.

¹⁴ *In re McAleece*, 7 C. L. Q. B. 146.

THE GAOLER.

The order of the Lords to this officer requires him to detain the prisoner "during the pleasure of the House". The duration of the session is immaterial in this case.¹

The warrant of the Speaker is to the same effect; but, on the prorogation of Parliament, the prisoner is entitled to immediate discharge.²

In the case of the writs of the High Court, a statutory duty is imposed on the gaoler to detain the prisoner;³ and where a prisoner is brought up by the serjeant-at-arms, an order is (if necessary) made to turn him over to the gaoler. As to the warrant of committal which is executed by the tipstaff, where the committal is by way of punishment and not by way of process, it ought to be certain as a sentence, and the term of imprisonment should be specified.⁴ In the case of prisoners sentenced at the assizes, there is no warrant, but a copy of the calendar is delivered to the gaoler, and is the authority under which he detains the prisoners. This is signed by the judge.⁵ Where persons are committed for seditious libel or contempt, they are to be treated as first-class misdemeanants.⁶ But this does not apply to a prisoner committed for acting as a solicitor when not duly qualified.⁷

On the receipt of a pardon or remission, or order of release, or to admit to bail, the gaoler must release according to the terms thereof.⁸

In attachment and committal, if the term of imprisonment does not appear on the writ or order, application to the Court must be made for discharge⁹; but no such application is necessary where the term does so appear.¹⁰ Where the contempt has been cleared, the defendant cannot be detained for non-payment of costs.¹¹

A person sentenced to imprisonment for one calendar month is entitled to be discharged on the day of the succeeding month immediately preceding the day corresponding to that from which his sentence takes effect.¹² And the time runs from the date of the

¹ *Per* Denman, C.J.: *Stockdale v. Hansard*, 9 A. & E. 1; 43 Lords Journ. 105.

² May, p. 89.

³ 23 & 29 Vict. c. 126, s. 82. [S., 19 & 20 Vict. c. 56, s. 34; 40 & 41 Vict. c. 53, s. 32.] I. c. 49, s. 40. As to penal servitude see 16 & 17 Vict. c. 99, s. 6.

⁴ Crawford, 13 Q. B. 629; *R. v. James*, 5 B. & Ald. 894; and see *In re Cobbett*, 7 Q. B. 187.

⁵ *R. v. Bethel*, 5 Mod. 22; Christ. Black. iv., 4044.

⁶ 40 & 41 Vict. c. 21, ss. 40, 41. [S., 40 & 41 Vict. c. 53, ss. 46, 47 and rules.] I. c. 49, s. 49.

⁷ *Osborne v. Millman*, 18 Q. B. D.

471; 56 L. J. Q. B. 263; 56 L. T. 808; 35 W. R. 397.

⁸ As to licenses, see 27 & 28 Vict. c. 112, Sched. Pardons and remissions are a branch of the Royal Prerogative. They do not, therefore, fall in this category, but, of course, must receive the like attention. The prerogative is confined to pardon. The crown has no dispensing power. *The Seven Bishops*, 12 St. Tr. 183; 3 Mod. 212.

⁹ *Natty v. Aylett*, 30 L. T. 783; *Greaves v. Keane*, 4 Ex. D. 73.

¹⁰ *Re Edwards*, 21 Ch. D. 230.

¹¹ *Jackson v. Mawby*, 1 Ch. D. 86.

¹² 61 & 62 Vict. c. 41, s. 12.

warrant of commitment, and not from that of the original arrest; ¹ and when the term expires on a Sunday, Good Friday or Xmas day, the prisoner is entitled to discharge on the preceding day.²

On receipt of a *habeas corpus* or of an order to produce in Court, which is to the same effect,³ the gaoler must produce the body of the prisoner in Court as required.

This officer is also required, within six hours after demand, to deliver a true copy of the commitment of any prisoner in his custody,⁴ and this has been held to apply to the case of a person detained under warrant of the Chief Secretary for Ireland.⁵

¹ *Henderson v. Preston*, 21 Q. B. D. 362; 36 W. R. 83; 57 L. J. Q. B. 607; and see *Bowdler's Case*, 17 L. J. Q. B. 243; 12 Q. B. 612. ² 28 & 29 Vict. c. 126, s. 41; 61 & 62 Vict. c. 41, s. 12. [S., 40 & 41 Vict. c. 6; 40 & 41 Vict. c. 53, s. 32.] I. c. 49. ³ 16 & 17 Vict. c. 30, s. 9. [S., 1701, c. 2, s. 5. [S., 1701, c. 2, s. 5. ⁴ 31 Car. II. c. 2, s. 5. [S., 1701, c. 6.] ⁵ *Sedley v. Arbouin*, 3 Esp. 173. a. 53, s. 33.]

2. OTHER THAN THOSE OF SUPERIOR COURTS AT COMMON LAW.

As was stated at the outset of the last chapter warrants and orders other than those of superior Courts, at common law, occupy in law a position different from those discussed in that chapter. In regard to these last, all that the officer has to do is to satisfy himself that the warrant or order issues in a due and regular manner, and he will then be justified in executing it, for "he ought not to examine the judicial act of the Court, whose servant he is, nor exercise his judgment touching the validity of the process in point of law, but is bound to execute it, and is therefore protected by it".¹

But when we come to consider warrants and orders which issue under statutory authority, or of inferior Courts at common law, the case is different, and the reason for this is that in the case of Courts and officers other than the superior Courts acting according to the course of the common law, the maxim *Omnia præsumuntur rite esse acta* does not apply to give jurisdiction.² Such a warrant or order therefore must contain not only the cause of issue and the period of detention (if any),³ but facts sufficient to show jurisdiction to make the particular order must also appear on the face of the instrument,⁴ otherwise it is no justification to the officer who executes it.⁵

The *mittimus* ought to have these circumstances. It must contain a certain cause, and therefore, if it be for felony, it ought not to be generally *pro feloniam*, but it must contain the special nature of the felony, so that it may appear to the judges upon a *habeas corpus* whether it be felony or not. It must have a certain date, and an apt conclusion,⁶ such as "him safely to keep until he may be dealt with by law".⁷ Where commissioners committed a bankrupt for not answering questions, the Court ordered his discharge, as the questions were not specified so that the Court might judge of their legality.⁸ And where a warrant left a blank for the Christian name of the person to be apprehended, giving no reason for the omission, it was held too general, and a resistance to such an arrest lawful, and the killing of the person attempting to execute it not murder.⁹

¹ *Turner v. Fellgate*, 1 Lev. 95; *Carratt v. Morley*, *ib.* 28. [Cf. *Strang, Cotes v. Michill*, 3 *ib.* 20.]

² *Per* Holroyd, J.: *R. v. All Saints*, 7 B. & C. 790. See *R. v. Totnes*, 11 Q. B. 80. ³ 2 Hale P. C. 122; *Kendal*, 5 Mod. 78; *Caudle v. Seymour*, 1 G. & D. 434; 1 Q. B. 889; 5 Jur. 1196.

⁴ 2 Inst. 52. ⁵ 2 Inst. 52; *Bracy*, 1 Ray. 99; *Groome v. Forrester*, 5 M. & S. 314; 816; *Christie v. Unwin*, 11 A. & E. 373; *Daniell v. Phillips*, 1 Cro. M. & R. 662. *Muskett v. Drummond*, 10 B. & C. 153. ⁶ *Ex parte Leake*, 9 B. & C. 240.

⁷ *Andrews v. Marris*, 1 Q. B. 17; ⁸ *R. v. Hood*, 1 Moo. C. C. 281.

But a warrant to arrest a party to the end that he may become bound at the next sessions has been held to mean those next after the arrest, and therefore the officer may in such case justify an arrest after the sessions next ensuing the date of the warrant.¹ It can, however, only be executed by the person to whom it is addressed.² Where it appears on the face of the proceedings that there is jurisdiction, it will be intended that the proceedings are regular,³ otherwise no such intendment will be made.⁴ And where the Court or officer has merely proceeded erroneously in the issue of process, but not without jurisdiction, the executing officer will be justified.⁵

There appears to be no distinction between warrants and orders so far as regards the question of jurisdiction.⁶ In orders as well as in warrants the facts conferring jurisdiction must appear thereon. "We cannot intend for or against the order, but must decide according to the words. However high the authority may be where a special statutory power is exercised the person who acts must take care to bring himself within the terms of the statute. Whether the order be made by the Lord Chancellor or by a justice of the peace, the facts which gave the authority must be stated."⁷ And where any Act confers a power to make, grant or issue any instrument, expressions used in the instrument are, unless the contrary intention appears, to have the same respective meanings as in the Act conferring the power.⁸

There is, however, an important distinction which must be here pointed out between the cases where warrants and orders of the class we are now considering, issue (1) after adjudication, and (2) where there has been no adjudication. And this distinction is mainly important in regard to the liability of the officer who executes the process. It may be thus stated: Where an officer executes a warrant or order made under statutory jurisdiction, or of an inferior Court at common law, after an adjudication, he is protected where it appears on the face of the instrument that (1) the Court or person from which it issues had jurisdiction, or (2) apparently had jurisdiction to issue such warrant or order.⁹

Where, however, he executes such a warrant or order where there has been no previous adjudication, the protection is confined to the case only where the jurisdiction to make it appears on the face of the

¹ *Mayhew v. Parker*, 8 T. R. 110; 2 Esp. 683.

² *Symonds v. Kurtz*, 61 L. T. 559; 53 J. P. 121; *Blue v. Fullerton*, 10 C. L. Ir. 233.

³ *Barnes v. Keane*, 15 Q. B. 75; *Baker v. Cave*, 1 H. & N. 674.

⁴ *Dempster v. Purnell*, 4 Sc. N. R. 39. [See *Moffat v. Shaw*, 23 R. 18; *Ballentine v. Ross*, 2 Mur. 529.]

⁵ *The Marshalsea*, 10 Rep. 68 b, 76 a.

⁶ *R. v. Hulcott*, 6 T. R. 583; *R. v.*

All Saints, 7 B. & C. 785; *Day v. King*, 5 A. & E. 367.

⁷ *Per Coleridge, J.*: *Christie v. Unwin*, 11 A. & E. 373; and see *Brook v. Jenney*, 2 Q. B. 275; and *Taylor v. Clemson*, *ib.* 978.

⁸ 52 & 53 Vict. c. 63, s. 31; and as to the time of coming into operation, see s. 36.

⁹ *Andrews v. Marris*, 1 Q. B. 17; *Ashcroft v. Bourne*, 3 B. & Ad. 684; *Brittain v. Kinnaird*, 1 B. & P. 432.

instrument, and in the event such jurisdiction has been properly exercised, and does not extend to the second case above-mentioned, namely, where it reasonably appears to have been within the jurisdiction, although it subsequently turn out to be in excess of it.¹

As to what is an adjudication, the principle contained in the maxim *audi alteram partem* is here applicable.² It has been laid down that no man is to be condemned, punished or deprived of his property in any judicial³ or other similar proceeding⁴ unless he has had opportunity of being heard.⁵ And this rule has been held to apply to judges of inferior Courts,⁶ to justices,⁷ and to cases arising under the Metropolis Management Act.⁸ It prevails universally unless excepted by the express wording of the Act conferring the power.⁹

QUEEN'S MESSENGERS.

The Secretary of State¹¹ has power at common law to issue to these officers a warrant for the arrest of a person charged with treason or other offences affecting the Government.¹¹

POST OFFICERS.

The Secretary of State has power also to issue to these officers warrants for the opening, detaining and delaying of post letters. There must be an express warrant for every such opening, detaining or delaying.¹² This is a prerogative warrant.¹³

MINISTER, CHURCHWARDENS AND OVERSEERS.

The coroner has power at common law to issue a warrant requiring these officers to exhume the body of a person within a reasonable time after burial upon which it is his intention to hold an inquest.¹⁴

¹ *Foster v. Dodd*, L. R. 3 Q. B. 67; *Wilkins v. Hemsworth*, 7 A. & E. 807.

² *Wood v. Wood*, L. R. 9 Ex. 190; 43 L. J. Ex. 190; 30 L. T. 815; 22 W. R. 709.

³ *Re Hammersmith Rent-charge*, 4 Ex. 96.

⁴ See *Russell v. Russell*, 14 Ch. D. 471; 49 L. J. Ch. 268; 42 L. T. 112.

⁵ *Wood v. Wood*, *ubi sup.*

⁶ *Kinning v. Buchanan*, 8 C. B. 271; *Abley v. Dale*, 10 C. B. 62; *Dews v. Riley*, 11 C. B. 734.

⁷ *Bessell v. Wilson*, 1 E. & B. 489; *Hammond v. Beuyshe*, 13 Q. B. 869; *R. v. Toines Union*, 7 Q. B. 690.

⁸ *Cooper v. Wandsworth*, 14 C. B. N. S. 180.

⁹ *Re Hammersmith Rent-charge*, *ubi sup.* See *post*, p. 156.

¹⁰ As to the visitation of religious houses, see 25 Hen. 8, c. 21, s. 20.

¹¹ 1 Ch. Cr. Law, 34, 107; Hawk. P. C. b. 2, c. 16; *Kendal v. Row*, 1 Ld. Ray. 65; *R. v. Wilkes*, 2 Wils. 151; *R. v. Despard*, 4 R. R. 563. A like power is conferred on the Privy Council, but this is obsolete. [In S. the Lord Advocate appears to have the like power: *Bell's Dict.*]

¹² Cases have occurred in which letters have been tampered with, and the Home Secretary has disclaimed any knowledge of the matter. Such tampering is a misdemeanour, see *post*, p. 210.

¹³ Ordinances of 1656, 1663 and 1683, by which the Post Office was established.

¹⁴ *Jervis*, 5th ed., p. 47. [Not applicable to S.]

Orders of the Privy Council issue directing such acts to be done by and under the direction of the churchwardens or such other person as may have the care of any vaults or places of burial, as shall prevent them from becoming or continuing dangerous or injurious to the public health.¹ If not done the Secretary of State may direct them to be done.² These orders apply only to existing burial grounds.³ A faculty from the Ordinary is necessary.⁴

Orders of the Secretary of State to remove any body interred.⁵

THE SHERIFF.

Courts of assize and quarter sessions are authorized to issue to this officer a writ (or warrant) for the recovery of fines, estreats, recognisances and the like.⁶ This writ, empowers the sheriff to levy the amount of the fine, etc., and, in the event of such amount not forthcoming, to take the defendant and lodge him in gaol until payment or until discharged by due course of law. If the defendant be not in his county he may issue his warrant to the sheriff of the county where the offender is found, who is required to execute it.⁷ For the fees see *post*.⁸

THE HIGH BAILIFF.

The warrants and orders of the County Court in this category are the following:—⁹

Warrants of committal for wilful insult to the judge or any juror, or witness, or any registrar, bailiff, or officer of the Court, or in going to or returning from the Court, or wilful interruption of the proceedings of the Court, or other misbehaviour in Court.¹⁰ To observe to a judge in the course of, and in reference to his judgment, that "that is a most unjust remark," is an insult, and if not withdrawn amounts to such a wilful insult as is contemplated by these sections.¹¹ An unqualified person cannot be committed for acting as a solicitor.¹²

The judge may under these sections verbally order this officer to take into custody the offender and detain him until the rising of the Court. And such order amounts to an adjudication as to the fact of wilful insult.¹³

¹ 20 & 21 Vict. c. 81, s. 23. These appear in the *London Gazette*. Not applicable to S. or I.

² 22 Vict. c. 1, s. 1.

³ *Foster v. Dodd*, L. R. 3 Q. B. 67.

⁴ *Lee v. Hawtrey*, 1898, P. 63.

⁵ 20 & 21 Vict. c. 81, s. 25.

⁶ See *Ex parte Edmonds*, 23 J. P. 324.

⁷ 22 & 23 Vict. c. 21, s. 36. [As to S. see 27 & 28 Vict. c. 83, s. 4.] As to I. 1 & 2 Will. 4 c. 44, s. 9.

⁸ Page 181.

⁹ The duties of this officer are in some cases performed by the registrar, but the liability in such cases is the same as that of the high bailiff; 51 & 52 Vict. c. 43, s. 37.

¹⁰ 51 & 52 Vict. c. 43, ss. 161, 162.

¹¹ *R. v. Jordan*, 36 W. R. 589; and see *R. v. Lambeth*, *ib.* 524.

¹² *R. v. Brompton, J.*, 1893, 2 Q. B. 195.

¹³ See *R. v. Jordan*, *ubi sup.*; *Ex parte Plater*, 12 W. R. 823; 33 L. J. M. C. 142.

[In Scotland the sheriff who is a judicial officer has power to commit for contempt.]¹ In Ireland the County Court has the same power.²

CONSTABLES.

The warrants and orders of this class which are executed by these officers are :—

Those of quarter sessions who may commit by order to the custody of its officers without warrant “for there is or ought to be a record of such commitment, and the order given *sedente curia* would probably be a protection to the officer”³. In the case of prisoners sentenced at the sessions there is a calendar as at the assizes.⁴

The coroner has power to order the arrest by warrant of a person found by the verdict of the jury guilty of murder or manslaughter,⁵ also of a witness for contempt of a summons,⁶ or for refusing to (1) give evidence, (2) sign his information, or (3) enter into recognisances.

Inferior Courts of Record have power to commit for contempt only when committed in the face of the Court.⁷

Justices may order arrest by warrant for not appearing to a summons or to answer a charge.⁸ And warrants of commitment either for punishment or for trial other than in civil matters⁹ fall in this category.¹⁰ They must be executed by the constable to whom addressed,¹¹ and no conditions can be annexed by the justices to the performance of the duty imposed, which the law does not warrant.¹²

The warrants of distress which issue on a conviction or order by justices in matters falling within this class, are to be here included. The conviction or order is enforced by this means in all cases save those under the Game, the Malicious Damage to Property and Person and a few other Acts, where the statute neither directs the same to be so levied or no mode of levying the penalty is provided.¹³

¹ *Hamilton*, 30 Jur. 608; *More v. Anderson*, 4 D. 786.

² 14 & 15 Vict. c. 57, s. 151.

³ *Per Parke, B., Watson v. Bodell*, 14 M. & W. 70; 2 Hale P. C. 122; and see *In re Clarke*, 2 Q. B. 619.

⁴ See *ante*, p. 13. [In S. justices have all the powers of those in England. 6 Anne c. 6, s. 2.]

⁵ 50 & 51 Vict. c. 56, s. 5.

⁶ *Jervis*, 5th ed., p. 47. This warrant is also addressed to the coroner's officer. [Not applicable to S.] As to I. see 9 & 10 Vict. c. 37, s. 35.

⁷ *R. v. Lefroy*, L. R. 8 Q. B. 134; 42 L. J. Q. B. 121.

⁸ 11 & 12 Vict. c. 42, s. 1.

⁹ See *post*, p. 84. As to whipping see 42 & 43 Vict. c. 49, ss. 10, 11.

¹⁰ Justices cannot commit for contempt merely: *Mayhew v. Locke*, 7 Taunt. 63; *Ex parte Hyndman*, 50 J. P. 151, except for refusal to answer,

11 & 12 Vict. c. 42, s. 16; c. 43, s. 7; 7 & 8 Vict. c. 101, s. 70. As to I. see 14 & 15 Vict. c. 93, s. 9, and *In re Rea*, 2 Q. B. 429.

¹¹ *R. v. Saunders*, L. R. 1 C. C. 75; 36 L. J. M. C. 87; 16 L. T. 331; 15 W. R. 752.

¹² *R. v. Middlesex*, 12 L. J. M. C. 36; *R. v. Handsley*, 7 Q. B. D. 398.

¹³ 11 & 12 Vict. c. 43, s. 19, and see s. 17; and *Re Clew*, 8 Q. B. D. 511; 51 L. J. M. C. 140; 46 L. T. 482; 30 W. R. 704. [In S. by 44 & 45 Vict. c. 33, s. 8 (1) in default of recovery of sufficient goods there may be a warrant to imprison. (2) All warrants of poinding and sale are to be executed in manner provided by the Small Debts Act, 1837, except that notice of sale is to be by advertisement. See *post*, p. 135.] In I. there are the like powers to those in England: 14 & 15 Vict. c. 93, s. 32.

By 42 & 43 Vict. c. 49, s. 43 (1), these warrants are to be executed by or under the direction of a constable, (2) save so far as the person against whom the distress is levied otherwise consents in writing, the distress shall be sold by public auction, and five clear days at least shall intervene between the making of the distress and the sale, and where written consent is so given as aforesaid, the sale may be made in accordance with such consent.

(3) Subject as aforesaid the distress shall be sold within the period fixed by the warrant, and, if not so fixed, then within the period of fourteen days from the date of the making of the distress unless the sum for which the warrant was issued and also the charges for taking and keeping the said distress are sooner paid.

(4) Subject to any directions to the contrary given by the warrant of distress, where the distress is levied on household goods, the goods shall not, except with the consent in writing of the person against whom the distress is levied, be removed from the house until the day of sale, but so much of the goods shall be impounded as are in the opinion of the person executing the warrant sufficient to satisfy the distress, by affixing to the articles a conspicuous mark. . . .

(7) A constable charged with the execution of a warrant of distress shall cause the distress to be sold, and may deduct out of the amount realised by such sale all costs and charges actually incurred in effecting such sale,¹ and shall render to the owner the overplus, if any, after retaining the amount of the sum for which the warrant was issued, and the proper costs and charges of the execution of the warrant.

(8) Where a person pays or tenders to the constable charged with the execution of a warrant of distress, the sum mentioned in such warrant, or produces the receipt for the same of the clerk of the Court of summary jurisdiction issuing the warrant, and also pays the amount of the costs and charges of such distress up to the time of such payment or tender, the constable shall not execute the warrant.

By sect. 21 (2) wearing apparel and bedding of a person and his family, and, to the value of £5, the tools and implements of his trade, shall not be taken.

In the event of another and civil execution being in at the same time, these warrants being ones in which the king is interested have priority.²

The following warrants and orders issue without adjudication.

The Secretary of State issues his warrant under the Extradition Act,³ and any person to whom such warrant is directed may receive, hold in custody, and convey within the jurisdiction of the foreign State the criminal mentioned therein; and if the criminal escapes out of any custody to which he may be delivered on or in pursuance of such warrant, he may be retaken in the same manner as any person accused of any crime.⁴ This Act applies only subject to

¹ Sub-s. (5) imposes a summary penalty of £5 for excessive charges or other exaction.

² See *Att.-Gen. v. Leonard*, ante, p. 10.

³ 33 & 34 Vict. c. 52, s. 11.

⁴ *Ibid.* See *post*, p. 38.

treaty,¹ and generally not to offences of a political character.² If the description of the offence is sufficient, the warrant will be good.³ A person already in custody may be detained.⁴ It applies to all persons of whatever nationality committing the specified crimes in the treaty countries, unless by treaty specially exempted.⁵ The offences in the schedule to the Act⁶ are all indictable by our law.

Also under the Fugitive Offenders Act,⁷ and in this case there is the same proviso as to retaking on an escape.⁸

And under the Criminal Lunatics Acts⁹ such warrant may be executed by any constable, as if it were for the arrest of a person charged with an offence.¹⁰

Quarter sessions have power to issue a bench warrant for the arrest of a person charged with felony or misdemeanour.¹¹

Where a riot, rout or unlawful assembly exists, a justice present may verbally order its dispersal. One hour after the reading of the proclamation the justice may order the mob to be fired into or charged sword in hand; or before that time, where a felony has actually been committed or cannot otherwise be prevented.¹²

But the warrants which are addressed to constables for execution are principally those of justices of the peace out of sessions.

In all cases of treason, felony or other indictable offence,¹³ the warrants issued fall within this category.¹⁴

¹ See *R. v. Wilson*, 3 Q. B. D. 42.

² *Ex parte Castioni*, 1891, 1 Q. B. 149; 39 W. R. 202.

³ *Ex parte Terraz*, 4 Ex. D. 63; *In re Bellemontre*, 39 W. R. 381; 1891, 2 Q. B. 122; 64 L. T. 461.

⁴ *R. v. Weil*, 9 Q. B. D. 701.

⁵ *R. v. Ganz*, *ib.* 93.

⁶ And see 36 & 37 Vict. c. 60, s. 8.

⁷ 44 & 45 Vict. c. 69, s. 6.

⁸ *Ibid.*, s. 28. [*Carlin v. Cape Colony*, 12 R. J. C. 50.]

⁹ 47 & 48 Vict. c. 64, s. 15, and see 23 & 24 Vict. c. 75, s. 2; 39 & 40 Geo. III. c. 94, and 46 & 47 Vict. c. 38. [S. 34 & 35 Vict. c. 55.]

¹⁰ As to the warrants of the Secretary of State for War for billeting soldiers,

see 44 & 45 Vict. c. 58, s. 104. The inn-keeper is bound to receive the number in the route: *Sharrat v. Scotney*, 1892, 2 Q. B. 479.

¹¹ 1 Ch. Cr. Law, 939.

¹² *R. v. Neale*, 9 C. & P. 481; *R. v. Pinney*, 5 *ib.* 254; *Keighley v. Bell*, 4 F. & F. 790. [The law in S. is the same.]

¹³ *Rawlins v. Ellis*, 16 M. & W. 172; and see *Conybeare v. The School Board for London*, 63 L. T. 635; 39 W. R. 288.

¹⁴ Warrants generally are granted under 11 & 12 Vict. c. 42, ss. 1-5, 9-16, 21, 24 and 25; 11 & 12 Vict. c. 43, ss. 2, 3, 7 and 19; and as regards the Metropolis, under 2 & 3 Vict. c. 71, ss. 19-25. As to I. 14 & 15 Vict. cc. 92, 93. Indictable misdemeanours are:—

Abduction	24 & 25 Vict. c. 100, s. 55. [S. common law.]
Abettors in misdemeanour	24 & 25 Vict. c. 94, s. 8. [S. 50 & 51 Vict. c. 35, s. 7.]
Abortion	24 & 25 Vict. c. 100, s. 59. [S. common law.]
Admiralty, uttering false certificates personating person entitled	28 & 29 Vict. c. 124, s. 6. s. 8.
Adulteration	38 & 39 Vict. c. 63, ss. 3, 4, 27.
Affray	Common law.
Agents	24 & 25 Vict. c. 96, ss. 75, 78. [S. common law.]
Aliens, false declaration	33 & 34 Vict. c. 102, s. 2.

These warrants are of three kinds, namely arrest, search and remand.

Arms, training to use	60 Geo. III. c. 1, s. 1.
Assault	Common law. 24 & 25 Vict. c. 100, ss. 20, 62. [S. common law.]
on parish officer	13 & 14 Vict. c. 101, s. 9; 24 & 25 Vict. c. 10. [S. common law.] I. 1 & 2 Vict. c. 56.
on county constable . . .	1 & 2 Wm. IV. c. 41, s. 11.
promoting another to do so .	2 & 3 Vict. c. 93, s. 8; 34 & 35 Vict. c. 112, s. 12.
on person arresting	14 & 15 Vict. c. 19, s. 12. [S. common law.]
Attempt to commit felony . . .	Common law. [S. 50 & 51 Vict. c. 35, s. 61.]
Ballot Act	35 & 36 Vict. c. 33, s. 5.
Bank shares	30 Vict. c. 29, s. 1.
Bankrupt—frauds	32 & 33 Vict. c. 62, ss. 11, 13, 14. 46 & 47 Vict. c. 52, s. 31. [S. 43 & 44 Vict. c. 34, s. 4.] I. 20 & 21 Vict. c. 60.
Blasphemous libel	Common law.
Bribery at elections	" "
Carnal knowledge, attempt . .	" "
Chain, cables, etc., malicious injury	27 & 28 Vict. c. 27, s. 12. [S. common law.]
Challenge to fight	Common law.
ChamPERTY	" " [S. unknown.]
Cheating by false weight . . .	" "
Child neglecting	24 & 25 Vict. c. 100, s. 27. [S. common law.]
Church or meeting-house . . .	1 Wm. & M. c. 18, s. 15; 5 & 6 Ed. VI. c. 4. [S. unknown.]
disturbing	24 & 25 Vict. c. 100, s. 36.
Clergyman, obstructing	24 & 25 Vict. c. 99, ss. 8-22, 35; 46 & 47 Vict. c. 45, s. 2.
Coin offences	39 Geo. III. c. 79, s. 3; 38 & 39 Vict. c. 86, ss. 4-7.
Combinations, unlawful	57 Geo. III. c. 19, s. 25. I. 4 Geo. IV. c. 87.
Compounding felony	Common law. [S. common law.]
misdemeanour	" "
informations	18 Eliz. c. 5, s. 4. 56 Geo. III. c. 138, s. 2.
Concealing birth	24 & 25 Vict. c. 100, s. 60. [S. 49, Geo. III. c. 14.]
Conspiracies	Common law. I. 43 Geo. III. c. 86.
Constable, refusing to assist, when required	Common law.
superannuation frauds . . .	53 & 54 Vict. c. 45, s. 9.
Copyright, false registration . .	5 & 6 Vict. c. 45, s. 12.
Corn returns	45 & 46 Vict. c. 37, s. 12.
Corporation frauds	— c. 50, s. 124.
Dead body, disinterring	Common law. [S. common law.]
Declaration, making false . . .	5 & 6 Will. IV. c. 62, s. 21.
Dentists	41 & 42 Vict. c. 33, s. 34.
Disobedience of order of justices, or direction under public general statute with no penalty	Common law. [S. contempt.]

Arrest.—The warrant of arrest can be executed only within the jurisdiction of the magistrate who issues it, otherwise it must be

Disorderly house, keeping . . .	25 Geo. II. c. 36, ss. 5-8. [S. 55 & 56 Vict. c. 55, s. 401.]
Driver's intimidating . . .	58 Geo. III. c. 70, s. 7. I. 7 Geo. IV. c. 9.
Election offences . . .	24 & 25 Vict. c. 100, s. 35.
	6 & 7 Vict. c. 18, ss. 81, 89. [S. 19 & 20 Vict. c. 58.]
	28 & 29 Vict. c. 36, s. 11. I. 18 & 14 Vict. c. 69.
	24 & 25 Vict. c. 53, s. 5; 46 & 47 Vict. c. 51, ss. 6, 33, 41.
municipal . . .	30 & 31 Vict. c. 102, ss. 11, 50.
Entry, forcible . . .	5 Ric. II. c. 8. [S. ejection and intrusion.]
	15 Ric. II. c. 2. [29 Geo. III. c. 46.]
	8 Hen. VI. c. 9. I. 5 & 6 Vict. c. 28.
	21 Jac. I. c. 15.
Escape from custody and rescue . . .	Common law. [S. common law.] I. 59 Geo. III. c. 92.
Explosives . . .	24 & 25 Vict. c. 97, s. 54; c. 100, s. 64.
Extortion by colour of office . . .	Common law. [S. common law.]
False imprisonment . . .	" " [S. 1701 c. 6.]
False pretences . . .	" " 24 & 25 Vict. c. 96, ss. 88-90. [S. common law.]
Falsification of accounts . . .	38 & 39 Vict. c. 24, s. 1. [S. common law.]
Felony, misprision of . . .	Common law. [S. common law.]
Fish stealing . . .	24 & 25 Vict. c. 96, s. 24. [S. common law.]
Foreign enlistment . . .	33 & 34 Vict. c. 90, ss. 4-7.
shipbuilding . . .	—, s. 8.
aiding equipment . . .	—, ss. 10, 12.
Forgery . . .	24 & 25 Vict. c. 98, s. 11; 38 & 39 Vict. c. 17, s. 81; 50 & 51 Vict. c. 58, s. 32. [S. common law.]
Fraudulent trustees . . .	24 & 25 Vict. c. 96, ss. 76, 77, 80-84. [S. common law.]
Friendly societies . . .	59 & 60 Vict. c. 25, s. 87.
Game offences . . .	9 Geo. IV. c. 69, ss. 1, 2, 9; 24 & 25 Vict. c. 96, s. 17.
Gaming, cheating at play . . .	8 & 9 Vict. c. 109, s. 19. [S. common law.]
Gaming-house, keeping . . .	Common law; 16 & 17 Vict. c. 119, s. 12. [S. 32 & 33 Vict. c. 87.]
Housebreaking . . .	24 & 25 Vict. c. 96, ss. 58, 59. [S. common law.]
Inciting to commit offence . . .	Common law. [S. common law.]
Indecent exposure . . .	" " 14 & 15 Vict. c. 100, s. 9. [S. common law.]
prints . . .	Common law. [S. common law.]
Industrial schools . . .	29 & 30 Vict. c. 117, s. 31 I. 31 & 32 ib. c. 25.
Infants, betting and loans . . .	55 & 56 Vict. c. 4, ss. 1, 2, 4.
Inland revenue . . .	53 & 54 Vict. c. 21, ss. 7, 14.
Jesuits . . .	10 Geo. IV. c. 7, s. 28. E.
Kidnapping . . .	Common law. [S. common law.]
Larceny . . .	24 & 25 Vict. c. 96, ss. 18-20, 26, 31. [S. common law.]

backed before execution by a magistrate in whose jurisdiction the execution is required to be made,¹ except that of a police magistrate issued under the Extradition Act.² Offences against the Coin, Ex-

Libel against Queen	Common law. [S. common law.]
administration of justice	6 & 7 Vict. c. 96, ss. 3-5. "
publishing against person	34 & 35 Vict. c. 79, s. 1.
Lodger, false declaration	10 Will. III. c. 23, s. 1. [S. common law.]
Lotteries	42 Geo. III. c. 119, s. 1.
Lunatics, offences against	53 & 54 Vict. c. 5, ss. 7, 40, 197, 215, 222, 231, 233, 237, 315-319, 321-324. [S. 20 & 21 Vict. c. 71.] I. 34 & 35 Vict. c. 32.
Maintenance	Common law.
Malicious damage	24 & 25 Vict. c. 97, ss. 13, 22, 32, 34, 37, 39, 50. [S. common law.]
Manslaughter	24 & 25 Vict. c. 100.
Manufacture	1 & 2 Will. IV. c. 37, s. 9. [S. common law.]
Medical practitioner	21 & 22 Vict. c. 90, ss. 38, 39; 15 & 16 Vict. c. 56, ss. 15, 16; 31 & 32 Vict. c. 121, s. 14.
Merchandise marks	50 & 51 Vict. c. 28, ss. 2, 8, 11.
Merchant shipping	57 & 58 Vict. c. 60, s. 457.
Military law	44 & 45 Vict. c. 58, ss. 11, 126, 142, 155.
Mines	50 & 51 Vict. c. 58, s. 33.
Misconduct of officers	Common law. [S. common law.]
Municipal corporations	45 & 46 Vict. c. 50, ss. 117, 235.
Music and dancing unlicensed	25 Geo. II. c. 36. E.
Mutiny	37 Geo. III. c. 70. I. 1 Vict. c. 91.
Nuisance on highway	Common law. [S. common law.]
Oaths, taking unlawful	5 & 6 Will. IV. c. 62, s. 13. [S. common law.] I. 50 Geo. III. c. 102.
Office, buying or selling	5 Ed. VI. c. 16.
Official secrets	49 Geo. III. c. 126, ss. 3-6.
Perjury	52 & 53 Vict. c. 52, ss. 1-3.
Pharmacy, false registration	Common law. I. 7 Geo. IV. c. 9.
Poison	15 & 16 Vict. c. 56, s. 15. I. 38 & 39 Vict. c. 57.
Poor-officer promoting marriage of mother of bastard	24 & 25 Vict. c. 100, s. 24.
injuring rate-book, or false evidence to assessment committee	7 & 8 Vict. c. 101, s. 8. [S. 8 & 9 Vict. c. 33.] I. 1 & 2 Vict. c. 56.
Post office	25 & 26 Vict. c. 103, s. 40; 26 & 27 Vict. c. 89, s. 4.
Pound, breach	7 Will. IV. & 1 Vict. c. 36, ss. 25, 31, 36; 47 & 48 Vict. c. 76, ss. 3, 4; 54 & 55 Vict. c. 46, s. 10.
Prize-fights	Common law.
Public stores	" "
Queen, firing at	38 & 39 Vict. c. 25, s. 4.
Railway offences	5 & 6 Vict. c. 51, s. 2.
	3 & 4 Vict. c. 97, s. 13, 14.
	24 & 25 Vict. c. 97, s. 36; c. 100, s. 34.
	31 & 32 Vict. c. 119, ss. 5, 20.
	34 & 35 Vict. c. 78, s. 10.

¹ 4 Black. 29.

² 33 & 34 Vict. c. 52, s. 13.

plosives, Forgery, Larceny, Malicious Damage, Merchant Shipping, and Post Office Acts, are triable where the offender is found.¹ It may be executed without being backed, not only by apprehending the offender at any place in the district of the justice's jurisdiction, but also where there is fresh pursuit at any place in the next adjoining

Real estate, false statement as to title	25 & 26 Vict. c. 53, ss. 105, 138. [S. common law.] 25 & 26 Vict. c. 67, s. 44, 45. I. 31 & 32 Vict. c. 101.
Reformatory schools	29 & 30 Vict. c. 118.
Registration, false declaration	6 & 7 Will. IV. c. 85, s. 39. I. 41 & 42 Vict. c. 43. 3 & 4 Vict. c. 72, s. 4. 19 & 20 Vict. c. 119, s. 18; 37 & 38 Vict. c. 88, s. 40.
Rescue	1 & 2 Geo. IV. c. 88, s. 1. [S. deforcement.]
of goods where breach of the peace	Common law.
Riot	Common law; 24 & 25 Vict. c. 97, s. 12.
Rout	Common law.
Savings banks	26 & 27 Vict. c. 87, s. 5.
Seamen, preventing ship loading	33 Geo. III. c. 67, ss. 1, 3; 57 & 58 Vict. c. 60.
Servants starving	24 & 25 Vict. c. 100, s. 26. [S. common law.]
Slaughter-houses	26 Geo. III. c. 71, s. 9.
Smuggling	7 & 8 Geo. IV. c. 53. 39 & 40 Vict. c. 36.
Spring-guns	24 & 25 Vict. c. 100, s. 31. [S. common law.]
Stamps	54 & 55 Vict. c. 38, s. 15.
Suicide, attempt	Common law. [S. common law.]
Tampering with witness	
Telegraphs	31 & 32 Vict. c. 110, s. 20; 47 & 48 Vict. c. 76, s. 11.
Trades unions	34 & 35 Vict. c. 31, s. 18.
Trade-offences	25 & 26 Vict. c. 89, ss. 166, 169. 30 & 31 Vict. c. 131, s. 19. 33 & 34 Vict. c. 61, s. 19.
Treasure-trove, selling	Common law. [S. common law.]
Unlawful assembly	
Unnatural crime	24 & 25 Vict. c. 100, s. 61.
Unwholesome food, offering for sale	Common law. [S. common law.]
Vaccination, false certificate	30 & 31 Vict. c. 84, s. 30; 34 & 35 Vict. c. 98, s. 7. [S. 26 & 27 Vict. c. 108.] I. 42 & 43 Vict. c. 70.
Vendors selling deeds	22 & 23 Vict. c. 35, s. 24. [S. common law.]
Veterinary surgeons	44 & 45 Vict. c. 62, ss. 11, 12.
Wife, exposing for sale	Common law.
Witchcraft, pretending	9 Geo. II. c. 5, s. 4.
Women and girls, offences against	24 & 25 Vict. c. 100, s. 52; 48 & 49 Vict. c. 69, ss. 2, 3-8.
Yeomanry	47 & 48 Vict. c. 55, s. 3.

¹ See *R. v. Peel*, 32 L. J. M. C. 65; 9 Cox C. C. 220; 7 L. T. 336; 11 W. R. 40.

county or place, and within seven miles of the border of such district. And offences committed on a vehicle are triable in any place through which such vehicle passed.¹ If it be directed to all constables in the jurisdiction of the justice, it may be executed by any peace officer for any parish, township, hamlet, or place within such jurisdiction.² If it be directed to a particular officer, it must be executed by him.³ It remains in force until executed.⁴ [In Scotland no backing is necessary if the warrant be that of the sheriff and be executed by a messenger-at-arms or the sheriff's officer.⁵ An indorsed warrant may be executed either by the bearer or by any of those to whom it was originally directed, or by officers of the place of indorsation.]⁶

In all cases other than treason and felony⁷ the officer is bound to have the warrant on him at the time of the arrest, otherwise the arrest will be illegal, resistance thereto will be lawful,⁸ and the killing of the officer in order to prevent the arrest will be manslaughter only.⁹

[In Scotland, the import of the warrant must be communicated, and if outside his jurisdiction the officer must show it on demand but need not part with it.]¹⁰

Search.—A search warrant is confined to comparatively few cases, such as stolen property,¹¹ obscene books,¹² unwholesome food,¹³ hops improperly marked,¹⁴ merchandise marks,¹⁵ forged instruments,¹⁶ and under the criminal law amendment act.¹⁷

Where the property sought for is found on the premises searched, a warrant of apprehension seems to be involved in this warrant, so that the arrest (if any) would take place under the warrant, and not of the constable's own motion.¹⁸ But if he seizes other property than that named, he will be liable to an action of trespass;¹⁹ the

¹ 7 Geo. IV. c. 64, ss. 12 and 13; *R. v. French*, 8 Cox C. C. 252. As to venue [S. 44 & 45 Vict. c. 33, s. 10; 50 & 51 Vict. c. 35, s. 22]. I. 9 Geo. IV. c. 54, ss. 26, 27.

² *R. v. Cumpston*, 5 Q. B. D. 341; 49 L. J. M. C. 41; 42 L. T. 543; 28 W. R. 539.

³ *Steph. Crim. Proc.*, Art. 104, and see *Gladwell v. Blake*, 1 C. M. & R. 636; 5 Tyr. 186; *Lee v. Vesey*, 1 H. & N. 30; 25 L. J. Ex. 271; and *R. v. Patience*, 7 C. & P. 775.

⁴ *Dickenson v. Brown*, Peake N. P. 234.

⁵ 1 & 2 Vict. c. 119, s. 25.

⁶ 11 & 12 Vict. c. 42, s. 15; 14 & 15 Vict. c. 93, s. 30. I.

⁷ For a list of these offences see *post*, p. 38.

⁸ *Codd v. Cabe*, 1 Ex. D. 352; 45 L. J. M. C. 101; 34 L. T. 453; 12 Cox C. C. 202; *Galliard v. Laxton*, 2 B. & S.

363; 9 C. C. C. 127; 31 L. J. M. C. 123; 10 W. R. 353; 5 L. T. 835.

⁹ *R. v. Chapman*, 12 Cox C. C. 4.

¹⁰ *Ante*, p. 7.

¹¹ 24 & 25 Vict. c. 96, s. 103.

¹² 20 & 21 Vict. c. 83, s. 1.

¹³ 38 & 39 Vict. c. 55, s. 119; 52 & 53 Vict. c. 11, s. 4; and see 6 & 7 Will. IV. c. 37, s. 11.

¹⁴ 29 & 30 Vict. c. 37, s. 10.

¹⁵ 50 & 51 Vict. c. 28, s. 12.

¹⁶ 24 & 25 Vict. c. 98, s. 46. [*Porteous*, 5 Irv. 456.]

¹⁷ 48 & 49 Vict. c. 69, s. 10. [In S. search warrants issue at common law, Bell.] In I. the Lord-Lieutenant may in proclaimed districts issue general warrants to search for arms: 44 & 45 Vict. c. 5, s. 1; 50 & 51 Vict. c. 20, s. 8.

¹⁸ *Wyatt v. White*, 29 L. J. Ex. 193.

¹⁹ *Crozier v. Cundy*, 6 B. & C. 232; 9 D. & R. 224.

property, however, need not be specified in the warrant,¹ and so also will he be if he stay an unreasonable time on the premises.²

As to stolen property, it is laid down that a constable may, when duly authorised by any chief officer of police, search and seize and secure any property he may believe to have been stolen, in the same manner as he would be authorised to do if he had a search warrant, and the property seized (if any) corresponded to the property described in such search warrant.

It shall be lawful for any chief officer of police to give such authority as aforesaid in the following cases or either of them:—

(1) When the premises to be searched are, or within the preceding twelve months have been, in the occupation of any person who has been convicted of receiving stolen property or of harbouring thieves; or,

(2) When the premises to be searched are in the occupation of any person who has been convicted of any offence involving fraud or dishonesty, and punishable by penal servitude or imprisonment.

And it shall not be necessary for such chief officer of police, on giving such authority to specify any particular property, but he may give such authority if he has reason to believe generally that such premises are being made a receptacle for stolen goods.³

Remand.—A warrant of remand is granted to detain a person charged in custody pending the further hearing of the case; and, in certain cases, the order may be verbal.⁴

As regards the Metropolis, it is laid down that the commissioner⁵ may issue an order in writing authorising a superintendent to enter any house, office, room or place within the metropolitan police district kept or used as a betting-house or office contrary to the Act, with such constables as shall be directed by the commissioner to accompany him, and, if necessary, to use force for the purpose of effecting such entry either by breaking open doors or otherwise. Having entered he may arrest all persons found therein, and seize all lists, cards, or other documents relating to racing or betting there found.⁶

With regard to what is such a house, office, room or place, it has been held, and may now be taken as settled, that any kind of in-

¹ *Jones v. German*, 1897, 1 Q. B. 374.

² *Peppercorn v. Hoffman*, 9 M. & W. 628.

³ Chief officer means in London the commissioners; elsewhere the chief constable, or other officer in command or any person authorised by him: 34 & 35 Vict. c. 112, ss. 16, 20.

⁴ 11 & 12 Vict. c. 43, s. 20. [S. 1701, c. 6.]

⁵ This officer is a justice: 10 Geo. IV. c. 44, s. 1.

⁶ 16 & 17 Vict. c. 119, s. 12. [S. 55 & 56 Vict. c. 55, s. 407.] The persons arrested need not be actually engaged in contravention of the Act: *Anderson v. Hume*, 46 J. P. 825; *Blake v. Beech*, 1 Ex. D. 320; 45 L. J. M. C. 111; 34 L. T. 674. But the betting must be on the premises: *Davis v. Stephenson*, 24 Q. B. D. 529; 59 L. J. M. C. 73; 62 L. T. 436; 38 W. R. 492.

closure, whether covered or not, with or without an erection, may come within the Act.¹ The word place is not, however, limited to those of the same nature as a betting-house or office² except in the case of inclosures on race-courses and other places devoted to sport.³ The owner of an inclosure is not liable if he take no part,⁴ nor is a person betting there if he do not remain in a fixed place.⁵ A table in Hyde Park⁶ or a club where members bet with one another is not within the section,⁷ nor is a room used for a sweepstake.⁸

A similar power is conferred on the commissioner in the case of a common gaming-house, and inasmuch as a betting-house is within the Gaming-House Act, the entry into a betting-house is usually effected by an order under this Act.⁹

The case of *Jenks v. Turpin*¹⁰ contains a *résumé* of the statute and common law relating to gaming. A common gaming-house is "a house in which a large number of persons are invited habitually to congregate for the purpose of gaming."¹¹ In default of other evidence, it shall be sufficient to prove: (1) that such house or place is kept or used for playing therein at any unlawful game, and that a bank is kept there by one or more of the players exclusively of the others; or (2), that the chances of any game played therein are not alike favourable to all the players, including among the players the banker or other person by whom the game is managed, or against whom the other players stake, play or bet".¹² It is immaterial whether the bank is kept by the owner, occupier or keeper of the house, or by one of the players. A house is not less a common gaming-house because gaming therein is restricted to the members of a club who resort thereto. "To no gaming-house is the public at large invited to go without restriction of some sort or other. . . . If the admission of 500 persons does not make it a common gaming-house, it might equally be said that the admission of 5000 would not. The law does not require that it shall be a public gaming-house: a common gaming-house is that which is forbidden."¹³ If the house be not exclusively devoted to gaming, that will not prevent it from coming under the description if such be the fact. The following games are unlawful: Ace of hearts, pharaoh (or faro), basset, hazard, passage,

¹ *Shaw v. Morley*, L. R. 3 Ex. 137.
See *Bows v. Fenwick*, L. R. 9 C. P. 339;
Clarke v. Hayne, 2 E. & E. 281; *Coyne v. Brady*, 12 Ir. C. L. 577.

² *R. v. Humphrey*, 1898, 1 Q. B. 875;
78 L. T. 360.

³ *Powell v. Kempton Park*, 77 L. T. 2.

⁴ *R. v. Cook*, 48 J. P. 351; 32 W. R. 795.

⁵ *Snow v. Hill*, 14 Q. B. D. 588, followed in *Whitehurst v. Fincher*, 17 Cox 70.

⁶ *Doggett v. Catterns*, 19 C. B. N. S. 765; 34 L. J. C. P. 159.

⁷ *Oldham v. Ramsden*, 44 L. J. C. P. 309; 32 L. T. 825; *R. v. Rozier*, 1 B. & C. 272; *R. v. Taylor*, 3 B. & C. 502.

⁸ *R. v. Hobbs*, 79 L. T. 160.

⁹ 8 & 9 Vict. c. 109, ss. 6 and 7; and see 2 & 3 Vict. c. 47, s. 48.

¹⁰ 13 Q. B. D. 505; 52 L. J. M. C. 161; 50 L. T. 808.

¹¹ 13 Q. B. D. 516; *R. v. Davies*, 1897, 2 Q. B. 199.

¹² 8 & 9 Vict. c. 109, ss. 2, 5, 8.

¹³ 13 Q. B. D. 515.

WARRANTS AND ORDERS.

roulet, every game of dice except backgammon, and every game of cards which is not a game of mere skill, and any other game of mere chance.

CUSTOMS.

The warrants to Customs officers are :—

Arrest, which is granted by justices under 39 & 40 Vict. c. 36, s. 221, and may be executed without backing anywhere in the United Kingdom.

Search, which is either under a writ of assistance issuing from the High Court, or justice's warrant under sects. 204 and 205 of the same Act.

The writ of assistance apparently confers no further power than the justice's warrant;¹ and in an action of trespass thereunder, entry can only be justified by the event.²

The warrant of justices under the Sea Fisheries Act, 1888, to enter suspected places is executed by these officers.³

And so also is the warrant of the Secretary of State to search a ship believed to be fitted out contrary to the provisions of the Foreign Enlistment Act,⁴ and, if necessary, to detain her.⁵

The receiver may under warrant search for and seize concealed wreck, and for this purpose may enter any house or other place, or any ship or boat.⁶

Detention.—Customs officers (or those of the Board of Trade) may by order of the detaining officer provisionally or finally detain a ship as unsafe.⁷ The Act does not apply to load-line in the case of colonial or foreign ships under equally effective local laws; but as to foreign ships the exemption must be mutual.⁸

The question in these cases is whether the facts with regard to the ship as she lays in port which would have been apparent to a person of ordinary skill on examining her and inquiring about her would have given him reasonable and probable cause to suspect her safety.⁹

EXCISE.

The warrants to these officers after adjudication are :—

Levy and Commitment.—The sale under a levy warrant must take place between four and eight days after issue unless the penalties

¹ *Per Kelly, arg. in R. v. Watts*, 2 B. & Ad. 172.

² *Per De Grey, C.J., in Bostock v. Saunders*, 2 W. Bla. 912, upheld by Lord Mansfield in *Cooper v. Booth*, 3 Esp. 135, though the principal decision was overruled.

³ 51 & 52 Vict. c. 59, s. 7.

⁴ 33 & 34 Vict. c. 90, s. 25.

⁵ S. 23, and see *R. v. Sandoval*, 56 L. T. 526; 35 W. R. 500; 16 Cox C. C. 206.

⁶ 57 & 58 Vict. c. 60, s. 537.

⁷ 57 & 58 Vict. c. 60, s. 459; 60 & 61 Vict. c. 59.

⁸ *Chalmers v. Scoponich*, 1892, 1 Q. B. 735.

⁹ *Thompson v. Farrer*, 9 Q. B. D. 372. As to compensation where no reasonable cause for detention, see s. 460, and *Dixon v. Calcraft*, 1892, 1 Q. B. 458.

or sums are sooner paid or satisfied.¹ The officer is to deduct the penalty or sum for which such levy is made, and all reasonable charges and expenses attending such levy, and return the overplus to the proprietor of the goods, and such officer shall, if required, show the warrant to the person upon whose goods the levy shall be made, and suffer such person to take a copy thereof.²

Without adjudication the warrants are :—

Arrest, which is issued under 7 & 8 Geo. IV. c. 53, s. 90.

Search, which issues under sect. 34 of the same Act, and sect. 140 of 43 & 44 Vict. c. 24. This last may be executed in the night, provided it be in the presence of a constable.³

Distress.—If any duty payable by a brewer remain unpaid, the collector may by warrant empower any person to distrain all beer, malt or other materials for brewing, vessels and utensils belonging to the brewer, or in any premises in the use or possession of the brewer, or of any person on his behalf, or in trust for him, and to sell the same by public auction, giving six days previous notice of the sale, the proceeds to be applied towards payment of the costs and expenses of the distress and sale, and of the payment of the duties due and the overplus, if any, to be paid to the brewer. Before the day of sale the brewer may remove the whole or any part of the beer, malt or other materials distrained, on paying to the collector towards payment of the duty the true value of such beer, malt or other materials.⁴ The procedure as to distillers is the same, except that permits for removal are on application to be granted as if the distress had not been made.⁵

TAXES.

Warrants of the commissioners for levying distresses on non-payment of taxes and of commitment of defaulters are executed by the collectors. By 43 & 44 Vict. c. 19, s. 86 (3), a levy or warrant to break open shall be executed by or under the direction and in the presence of the collector.

By sub-sect. (2), the breaking must take place in the daytime.

(4) Every distress shall be kept for the space of five days at the costs and charges of the person so refusing to pay.

(5) If the sum due not then paid, the said distress shall be appraised by two or more of the inhabitants, or other sufficient persons, and there be sold by public action by the said collector or his deputy for the payment of the said money, the overplus, if any, after deduct-

¹ 7 & 8 Geo. IV. c. 53, s. 88.

⁴ 43 & 44 Vict. c. 20, s. 17.

² S. 89.

⁵ c. 24, s. 48. See also 7 & 8 Geo.

³ [As to S. 3 Geo. IV. c. 52, s. 113.] IV. c. 53, s. 27.

I. 1 & 2 Will. IV. c. 55, s. 17; 17 & 18 Vict. c. 89, s. 2.

ing the said money, and also the costs and charges of taking, keeping, and selling the said distress, to be restored to the owner.¹

The amount assessed must be paid unless the plaintiff appeal.²

By sect. 88 (1) of the same Act no goods are to be taken in execution except at the suit of the landlord for rent, unless arrears of taxes are first discharged.

A bill of sale is no protection in respect of chattels which but for such bill of sale would have been liable to distress under a warrant for the recovery of taxes, and poor and other parochial rates.³

This section only applies to proceedings under distress warrant.⁴

By 57 Geo. III. c. 93, s. 1, and 7 & 8 Geo. IV. c. 17, distresses for taxes under £20 are not to be charged for otherwise than as in the schedule to the first Act.⁵

One warrant for several duties is sufficient.⁶

As to the warrant of commitment the power of the commissioners is to commit a defaulter until payment of the sum due together with the costs and expenses of apprehension and conveyance to gaol.⁷

THE GAOLER.

The warrants of commitment above-mentioned are also addressed to this officer.⁸

For not entering into recognisances or finding sureties to keep the peace, the imprisonment is not to exceed twelve months,⁹ and for non-payment of a penalty under the Customs Act six months.¹⁰

Prisoners committed for contempt of Court are to be treated as first-class misdemeanants.¹¹

The warrant of the Secretary of State and of the County Court,¹² and the order of the Court to bring up a prisoner for trial¹³ go to

¹ The powers conferred by 33 Geo. III. c. 55, may be employed under this Act. These powers are contained in sect. 3, which was repealed by 11 & 12 Vict. c. 43, s. 36, but which it is presumed is revived by this sub-section. In the event of no sufficient distress being found in the district, it authorises a justice of a foreign jurisdiction to back the warrant in order that distress may be levied there.

² *Simpkins v. Robinson*, 45 L. T. 221, and see *Allen v. Sharp*, 2 Ex. 352; 17 L. J. Ex. 209.

³ 45 & 46 Vict. c. 43, s. 14. I. 46 & 47 Vict. c. 7. [Not applicable to S.]

⁴ *Wimbleton v. Underwood*, 1892, 1 Q. B. 836.

⁵ See *post*, p. 186.

⁶ *Patchett v. Bancroft*, 7 T. R. 367.

⁷ 43 & 44 Vict. c. 19, ss. 22 and 89.

⁸ [S. 1701, c. 6; 11 Geo. IV. c. 37, s. 6.] As to whipping see 24 & 25 Vict. c. 96, s. 119; c. 97, s. 75; c. 100, s. 70; 26 & 27 Vict. c. 44, s. 1. Women are exempt: 1 Geo. IV. c. 57. [S. 23 & 24 Vict. c. 105, s. 74.] I. 14 & 15 Vict. c. 92, s. 6.

⁹ 16 & 17 Vict. c. 30, s. 3; 61 & 62 Vict. c. 41, s. 6. [S. six months by sheriff, fourteen days by justice: 45 & 46 Vict. c. 42, s. 6.]

¹⁰ 39 & 40 Vict. c. 36, s. 236.

¹¹ *Ante*, p. 13.

¹² 61 & 62 Vict. c. 41, s. 11, and 51 & 52 Vict. c. 43, s. 112.

¹³ 30 & 31 Vict. c. 35, s. 10. See s. 7 as to conveyance to hear deposition.

this officer. The two first-mentioned are made of equal force with a *habeas corpus*.¹

The Secretary of State may issue a warrant to remove an insane prisoner to an asylum,² and a justice to remove a prisoner to a reformatory school.³

As to the discharge of prisoners, see *ante*.⁴

¹ See *ante*, p. 14.

² 47 & 48 Vict. c. 64, ss. 2-5. [S. 25 industrial schools, see c. 118, ss. 42, 43.

& 26 Vict. c. 54, s. 23.]

⁴ P. 13 ; and as to discharge under

³ 29 & 30 Vict. c. 117, s. 15. As to the Taxes Acts, 43 & 44 Vict. c. 19, s. 9.

2. INHERENT POWERS.

INHERENT powers are properly those which are derived from the common law, but as a considerable number of other similar powers have been from time to time conferred by statute, it should be premised here that, where a power is so conferred, it must be pursued strictly, or it will afford no justification in the event of action arising on account of its exercise. This principle will be found laid down in the case of *Warne v. Varley*.¹ There searchers of leather had been appointed under statute, who were authorised to seize leather insufficiently dried, in order to carry it before officers called triers. It was held that this authority did not extend to the seizure of any leather which was sufficiently dried, though *in their judgment* it was not so, and that such a seizure having taken place, they were liable to an action of trespass. But, although this is the general principle, it must be read in conjunction with the statutory protection of officers when acting or neglecting to act *bonâ fide*, in the belief that they were discharging their duty, and which will be found discussed *infra*.²

OFFICERS ATTENDING COURTS.

In the case of all officers attending Courts, it is obvious that, whether the Court be the High Court of Parliament or a petty sessions, the object of their attendance is to secure order and decorum during the sittings thereof. It is presumed, therefore, that it follows that they have in their own persons power to take such steps as may be reasonably necessary to secure the maintenance of such order and decorum without any specific instructions for that purpose; and that to this end they may remove any persons who make a disturbance, or prevent from entering those who are in an improper state.³ In cases involving charges of indecency, women have usually been denied admittance; but it seems they are entitled to be present if they think fit.⁴

SHERIFF.

When a jury has been empanelled, they are strictly in the custody of the sheriff until their verdict be given. In practice, however, this

¹ 6 T. R. 443, and see *Grindley v. Baker*, 1 B. & P. 229.

² Page 166.

³ May, *Parl. Prac.*, 10th ed., p. 69.

⁴ Liverpool Assizes, May, 1891.

rule is relaxed, except on the trial of persons for serious crimes. Where they are detained, a bailiff is sworn to keep them together, and not to suffer any to speak to them.¹

HIGH BAILIFF.

If any County Court officer or bailiff shall be assaulted while in execution of his duty, or if any rescue shall be made or attempted of any goods levied under process of the Court, the officer may apprehend the offender and bring him before the judge.² An officer who has left for refreshment and is assaulted on his return is within the section.³

CONSTABLES.

The duty of constables is to preserve the peace, and where any serious offence against the law is committed, to seize the offender and bring him before a justice.⁴ If resisted in the execution of duty, they may repel force by force, provided it is proportioned to the injury it is intended to prevent.⁵

In a number of cases these officers are required to lend their assistance to other officers, either to effectuate the execution of some warrant or some power which such other officer has in his own person. In such cases, it has been held, the constable is in the execution of his duty;⁶ but if he act purely ministerially, and is not guilty of any excess, he is not liable while so acting;⁷ and if protection be afforded to these other officers, he is usually entitled to share it.⁸

These officers may be required to aid in the execution of warrants of this class at any time, unless the time be limited by statute.⁹

Three classes of persons, *viz.*, infants, lunatics and married women, are under certain circumstances excused from the consequences of criminal acts; but this is a matter for the judge or magistrate, and would not generally affect the duty of a constable to act in such cases.¹⁰

Arrest.—The inherent power of a constable to arrest in these cases is confined to treason, felony or reasonable suspicion thereof,

¹ Hale P. C. II., p. 296. [S. see 50 & 51 Vict. c. 35, s. 55.]

² 51 & 52 Vict. c. 43, s. 48. See *Lewis v. Owen*, 1894, 1 Q. B. 102. I. see 27 & 28 Vict. c. 99, s. 26.

³ *Coffin v. Dyke*, 48 J. P. 757.

⁴ [See *Macdonald v. Lyon*, 1 Stuart 129.]

⁵ 1 East P. C. 297. [S. same.]

⁶ *R. v. Clarke*, 4 N. & M. 671; 3 A. & E. 287; 1 H. & W. 252.

⁷ Cf. *Flewster v. Royle*, and *Glynn v. Houston*, etc., *post*, p. 112.

⁸ See *post*, p. 165.

⁹ *Miller v. Knox*, 6 Sc. 1.

¹⁰ See on this, 1 Hale 25-28, 44, 434, 516; *R. v. Hodges*, 8 C. & P. 195; *R. v. Cruse*, *ib.* 541. [S. 1696, c. 41.]

and those indictable misdemeanours which are specially provided for by statute, and detailed below.¹

With regard to the time of arrest, it appears that on a criminal charge it may take place at any time of the day or night;² and in cases of treason or felony, on Sunday also.³

As to breaking doors, it seems that that can take place only in two cases:—

1. In an affray which occurs in his view, he may pursue the affrayers, and if they fly to a house into which he is not permitted to enter, he may in the immediate pursuit break the doors to apprehend them.⁴ Or if there be an affray in a house, and the doors be shut, whereby there is likely to be manslaughter or bloodshed committed.⁵

2. If a felony be committed, and there be reasonable ground of suspicion⁶ that the felon was in the house,⁷ or if a felony will probably be committed unless he interfere, and there are no other means of entering,⁸ he may in immediate pursuit⁹ break the door.

In all other cases a warrant is apparently necessary.¹⁰

A constable cannot justify handcuffing a prisoner unless he has attempted to escape, or it be necessary in order to prevent his doing so.¹¹

Where the circumstances are such that a man must know why a person is about to apprehend him, he need not be told, and the arrest will be legal, and resistance illegal, as if he had been told.¹²

There is no limitation as to the time in which justices can entertain a charge of this class, unless it be imposed by statute.

A constable has no authority at common law to act out of his vill.¹³ But a police authority may now enter into an agreement with another authority to aid such other authority either generally or for any particular time. And under such an agreement the constables of the aiding force are deemed to have all powers and privileges of the aided force.¹⁴

In felonies, and under the Coin, Industrial Schools, Larceny and Night Offenders Acts,¹⁵ any person may arrest, which words include, of course, a constable out of his jurisdiction. In such case he would

¹ A person cannot be arrested on suspicion of having committed a misdemeanour: *Matthews v. Biddulph*, 4 Sc. N. R. 54; 11 L. J. M. C. 13; 1 D. P. C. 216; *Bowditch v. Balchin*, 19 L. J. Ex. 337; 5 Ex. 378; 15 L. T. 232. [McVie, 2 Irv. 429.]

² Greenwood, *Magist. Guide*, 3rd ed., p. 129.

³ 29 Car. 2, c. 7, s. 6. As to escape see *Moore*, 2 Ld. Ray, 1028. [Maitland, 24 D. 193.]

⁴ 2 Hawk. P. C., c. 14, s. 8.

⁵ 2 Hale P. C. 95; *Smith v. Shirley*, 3 C. B. 142.

⁶ See *post*, p. 39.

⁷ 2 Hale P. C. 95.

⁸ Greenwood, p. 209.

⁹ See *R. v. Marsden*, *infra*.

¹⁰ 2 Hale P. C. 95. [S. same. Hume ii., 76, and the breaking applies to any house or place within.]

¹¹ *Wright v. Court*, 4 B. & C. 596; 6 D. & R. 625.

¹² *R. v. Howarth*, 1 Moo. C. C. 207.

¹³ 1 Hale P. C. 459, and see *Gladwell v. Blake*, 1 C. M. & R. 686; 5 Tyr. 186. [Leask, 21 R. 32.]

¹⁴ 53 & 54 Vict. c. 45, s. 25. The Secretary of State may in case of emergency authorise a contingent of metropolitan constables to assist the local force.

¹⁵ See these statutes cited, *infra*.

not be acting in execution of his duty, and could not therefore claim the privileges accorded to a constable when so acting.

Authority to arrest is confined to the following cases:—

Where there is an affray, *i.e.*, the fighting of two or more persons in some public place to the terror of Her Majesty's subjects.¹ No quarrelsome or threatening words are sufficient;² but there need be no actual violence; as where persons arm themselves with dangerous and unusual weapons.³ Here the constable may arrest and carry the affrayers before a justice, or detain them till their heat be over. But it is essential that the party should have been engaged in the affray, and that the constable should have had view of the affray while the party was so engaged in it, and that the affray was still continuing at the time of apprehension.⁴ If they fly into a house he may in the immediate pursuit break in to apprehend them.⁵

To justify an arrest for an assault and battery in a constable's view, it must be such as would justify a criminal charge.⁶ Where a man in the presence of a constable raised a shovel as if to strike his wife, swearing that he would have murdered her were it not for the presence of the constable, and afterwards for about twenty minutes continued to use violent language towards his wife, and then left his house professing an intention of going to his father's to sleep; and after he had gone a few yards the constable arrested him, he was held justified in doing so.⁷ But where upon an assault on a constable in the execution of his duty, a delay of over an hour occurred, when the house of the prisoner was forced and he was arrested therein, the arrest was held illegal.⁸ And so also is one on the charge of another constable which is not well founded.⁹

A prize-fight is an assault, and this has been held to be such a fighting, whether with gloves or not, that injury to one of the combatants is likely to ensue;¹⁰ all persons aiding and abetting therein are guilty of assault, but the mere presence of a person is not conclusive of aiding or abetting.¹¹

A battery includes beating and wounding. To beat means not merely to strike forcibly with the hand, or a stick, or the like, but includes every touching or laying hold (however trifling) of another's person or clothes in an angry, revengeful, rude, insolent, or hostile manner,¹² as, *e.g.*, thrusting or pushing him in anger,¹³ holding him by

¹ 1 Hawk. P. C., c. 63, s. 13. This is properly a breach of the king's peace.

² *Ibid.*, s. 3.

³ Sects. 2, 4.

⁴ *Cook v. Nethercote*, 6 C. & P. 741.

⁵ 2 Hawk. P. C., c. 14, s. 8.

⁶ *Coward v. Baddeley*, 4 H. & N. 481; 5 Jur. N. S. 414. As to assault on officers, see 34 & 35 Vict. c. 112, s. 12; 43 & 49 Vict. c. 75, s. 2; 57 & 58 Vict. c. 57, s. 43. [*O'Brien*, 8 R. 8.]

⁷ *R. v. Light*, 27 L. J. M. C. 1; D. & B. C. C. 232.

⁸ *R. v. Marsden*, L. R. 1 C. C. 131; 37 L. J. M. C. 80; 18 L. T. 298.

⁹ *Griffin v. Coleman*, 4 H. & N. 265; 28 L. J. Ex. 134.

¹⁰ *R. v. Orton*, 39 L. T. 293; 14 Cox C. C. 266; *R. v. Young*, 10 *ib.* 371.

¹¹ *R. v. Coney*, 8 Q. B. D. 534; 37 L. J. M. C. 66; 46 L. T. 307; 30 W. R. 678.

¹² 1 Hawk. c. 62, s. 2; *Rawlings v. Till*, 3 M. & W. 28.

¹³ *Per Holt, C.J.*, 6 Mod. 142.

the arm,¹ spitting in his face, jostling him out of the way,² pushing another against him,³ throwing a squib at him,⁴ striking a horse on which he is riding by which he is thrown.⁵ If one strike at another and miss him it is an assault only. A wounding is where the violence is so great as to draw blood.⁶ No battery can occur by mere misadventure,⁷ nor where a parent moderately corrects his child,⁸ or a master his servant or scholar,⁹ or if the defendant committed it merely in his own defence,¹⁰ or in defence of a husband, wife, child, parent, master or servant.¹¹

Any meeting whatever of great numbers of people with such circumstances of terror as cannot but endanger the public peace and raise fears and jealousies among the king's subjects, seems properly to be called an unlawful assembly, as where great numbers, complaining of a common grievance, meet together armed in a warlike manner, in order to consult together concerning the most proper means for the recovery of their interests, for no man can foresee what may be the event of such an assembly.¹² Illegal drilling constitutes an unlawful assembly,¹³ and so also would it appear to be where parties assemble together to obstruct the officers of the law,¹⁴ or to witness a prize fight.¹⁵ Any assembling together in thoroughfares for the purpose of peaceably passing along is lawful. But there is apparently no common law right of stationary meeting in any thoroughfare or public place.¹⁶

A lawful assembly may become unlawful if during its course seditious words are spoken of such a nature as to produce a breach of the peace.¹⁷ Where persons assembled with others for a lawful purpose, and with no intention of carrying it out unlawfully, but with the knowledge that their assembly would be opposed, and with good reason to suppose that a breach of the peace would be committed by those who opposed it, they could not be convicted of an unlawful assembly.¹⁸ But where they assemble in pursuit of an object lawful in itself and in the carrying out of such object do

¹ *Per Holt, C.J.*, 6 Mod. 172.

² *Ibid.* 149.

³ Bull. N. P. 16.

⁴ 2 W. Bl. 892.

⁵ 1 Mod. 24.

⁶ *Post*, p. 44.

⁷ *Gibbon v. Pepper*, 2 Salk. 637; *R. v. Gill*, 1 Str. 490.

⁸ Com. Dig. Pl. 3 M. 19; 1 Hawk. c. 60, s. 23.

⁹ See *Gardner v. Bygrave*, 6. T. L. R. 23.

¹⁰ 1 Sid. 246; 1 Rol. Rep. 19.

¹¹ 2 Rol. Abr. 546 d.; 1 Hawk. c. 60, ss. 23, 24.

¹² 1 Hawk. P. C. c. 65, s. 9. Where the assembly is for an unlawful purpose there need be no tumult.

¹³ 60 Geo. III. c. 1, s. 2; and see 44 & 45 Vict. c. 5, s. 1 as to illegal posses-

sion of arms I.; and also 1 & 2 W. IV. c. 44, and 5 & 6 Vict. c. 28.

¹⁴ *Per Fitzgerald, J.*, *R. v. McNaughten*, 14 Cox C. C. 576.

¹⁵ *R. v. Bellingham*, 2 C. & P. 234; *R. v. Perkins*, 4 ib. 537.

¹⁶ *R. v. Graham*, 32 Sol. J. 179; 16 Cox 420. Cf. *De Morgan v. Metropolitan Board of Works*, 49 L. J. M. C. 58; 28 W. R. 489, and *Homer v. Cadman*, 34 ib. 413. As to Trafalgar Square, see *Ex parte Lewis*, 21 Q. B. D. 191; 57 L. J. M. C. 108; 59 L. T. 338; 37 W. R. 13.

¹⁷ *R. v. Burns*, 16 C. C. C. 355.

¹⁸ *Beatty v. Gillbanks*, 9 Q. B. D. 308; 51 L. J. M. C. 117; 47 L. T. 194; 31 W. R. 275, and see *Beatty v. Glenister*; 51 L. T. 304.

something which may lead to a breach of the peace or is calculated to lead others to believe that a breach of the peace will be committed, it is a question whether it is an unlawful assembly or not.¹

The local authority responsible for the maintenance of order may, in their discretion, issue notices warning persons not to attend a meeting, but a meeting held there subsequently is not an unlawful assembly by reason only of the existence of such a notice.² Any one who reads it however is aware of the character of the meeting and thus affected with responsibility for attending it.³

An assembly being unlawful may be dispersed.⁴

A person about to expose an infant whereby its life may be endangered may be arrested.⁵

A convicted person, at large on licence, whom a constable may reasonably suspect⁶ of having committed any offence or broken any of the conditions of such licence⁷ may be apprehended. And so also may persons twice convicted if they are found getting their living by dishonest means, or found under suspicious circumstances, or found on premises without being able to give a satisfactory account of themselves.⁸

Persons committing, or who have or there is reason to believe have committed, offences against the Cruelty to Children Act may be arrested if there is reason to believe the person will abscond and his name and address cannot be ascertained, and the child may be taken to a place of safety.⁹

The offences are—ill-treatment and neglect; causing child to beg.¹⁰

Offenders who have escaped cannot be retaken without warrant, unless the original offence was one for which no warrant was required.¹¹

Constables may be required to aid excise officers in the execution of their duties.¹²

With respect to felonies, inasmuch as they form a class to themselves, they are arranged alphabetically under this head.

A constable has power to arrest in the case of felony committed, or reasonable suspicion that it has been committed;¹³ or, as regards offences against the person, that it is about to be committed in the

¹ *R. v. Clarkson*, 66 L. T. 297.

² *R. v. Graham*, *ubi sup.*

³ *R. v. Fursey*, 6 C. & P. 81. [*Deakin v. Milne*, 10 R. J. C. 22.]

⁴ *R. v. Neale*, 9 *ib.* 431. Soldiers employed in suppressing such an assembly have the same powers, and are under the same liabilities as constables: *R. v. Pinney*, 5 *ib.* 254.

⁵ Arch. J. P. 122. [*Gibson*, 2 Broun 396.]

⁶ See *infra*.

⁷ *I.e.*, by conviction or failure to

report to police: s. 4; 27 & 28 Vict. c. 47, s. 6.

⁸ 34 & 35 Vict. c. 112, s. 7; and see 54 & 55 Vict. c. 69, ss. 2 and 6.

⁹ 57 & 58 Vict. c. 27, s. 7.

¹⁰ ss. 2, 3, 12.

¹¹ 2 Hawk. c. 14, s. 9.

¹² 7 & 8 Geo. IV. c. 53, s. 35.

¹³ *Beckwith v. Philby*, 6 B. & C. 635; 9 D. & R. 487; *Stonehouse v. Elliott*, 6 T. R. 315; *R. v. Phelps*, Car. & M. 180.

night-time.¹ Similar provisions are contained in the Larceny and Malicious Damage Acts.

Accessories before and after the fact are now liable in all respects as principals.²

With regard to what is reasonable suspicion, the grounds must be such as would lead a reasonable person acting without passion or prejudice to come to that conclusion.³

Abduction of a woman for lucre or under twenty-one.⁴

If the woman be taken away at first by consent, and afterwards refuse to continue with the offender, and be forcibly detained by him, it is sufficient.⁵ And so if she be forcibly taken away, and afterwards married or defiled by her consent,⁶ or if it be effected by fraud.⁷

Of any woman by force.⁸

Of a girl under fourteen.⁹

Abortion, attempt to procure.¹⁰

The administration of a drug must be by the defendant,¹¹ but mere delivery is not sufficient,¹² although the defendant need not be present at the time of taking the drug.¹³ The drug must be a poison or noxious thing,¹⁴ and the offence is complete whether the woman be or be not with child, and may be committed by the woman herself.¹⁵

Aqueducts, bridges or piles, malicious injury to.¹⁶

Arson of a church or chapel.¹⁷

Of a dwelling-house.¹⁸

Of an out-house, factory, etc.¹⁹

An unfinished structure is not within this section.²⁰

Of buildings belonging to railways and canals.²¹

Of public buildings.²²

Of other buildings.²³

An unfinished dwelling-house is included in this section.²⁴

If a man by wilfully setting fire to his own house burn that of a

¹ 24 & 25 Vict. c. 100, s. 66: c. 96, s. 104: c. 97, s. 57 [not applicable to S.].
I. see 48 Geo. III. c. 140: 5 Geo. IV. c. 102, ss. 13, 16-18.

² 24 & 25 Vict. c. 94, ss. 1 and 3.

³ *Allen v. Wright*, 8 C. & P. 522; *Leete v. Hart*, 37 L. J. C. P. 157; L. R. 3 C. P. 322.

⁴ 24 & 25 Vict. c. 100, s. 53. [S. common law.]

⁵ *Hawk.* c. 41, s. 7.

⁶ *Fulwood*, Cro. Car. 488; *Swenden*, 5 St. Tr. 450.

⁷ *R. v. Wakefield*, 1 Lew. Cr. C. 1; *R. v. Burrell*, 33 L. J. M. C. 54; 12 W. R. 149; 9 L. T. 426.

⁸ 24 & 25 Vict. c. 100, s. 54.

⁹ Sect. 56.

¹⁰ Sect. 58. [S. common law.]

¹¹ *R. v. Harley*, 4 C. & P. 369.

¹² *R. v. Cadman*, 1 Moo. C. C. 114.

¹³ *R. v. Wilson*, 26 L. J. M. C. 18; 1 D. & B. C. C. 126; 5 W. R. 70; *R. v. Farrow*, 1 D. & B. C. C. 164; 5 W. R. 269.

¹⁴ *R. v. Isaacs*, 32 L. J. M. C. 52; 11 W. R. 95; 7 L. T. 477; *R. v. Hollis*, 12 Cox, 463; 28 L. T. 455.

¹⁵ *R. v. Goodhall*, 1 Dea. 187; 2 C. & K. 298; *R. v. Whitchurch*, 24 Q. B. D. 420.

¹⁶ 24 & 25 Vict. c. 97, ss. 31, 33. [S. common law.]

¹⁷ Sect. 1. [S. 7 Anne c. 21.]

¹⁸ Sect. 2.

¹⁹ Sect. 3.

²⁰ *R. v. Edgell*, 11 Cox C. C. 132; 32 J. P. 168.

²¹ Sect. 4.

²² Sect. 5.

²³ Sect. 6.

²⁴ *R. v. Manning*, 1 C. C. R. 338;

41 L. J. M. C. 11; 25 L. T. 573.

neighbour it is sufficient.¹ The absence of malice or spite to the owner is no answer,² nor that the burning is trifling.³

Of goods in buildings.⁴

This does not extend to throwing a light into a letter box,⁵ nor to setting fire to goods to injure the owner of the goods, but not of the house.⁶

Attempts to fire buildings.⁷

Damaging house with gunpowder, etc., whereby the life of any one is endangered.⁸

This does not extend to mere wanton mischief;⁹ but includes persons imperilled outside the building.¹⁰

Setting fire to crops, etc.¹¹

This does not apply to a single tree.¹²

Firing stacks of corn, etc.¹³

Flax in seed is included;¹⁴ but straw in a lorry *in transitu*,¹⁵ or wood in a temporary loft, is not.¹⁶

Attempts to fire stacks, etc.¹⁷

It is sufficient if the attempt be abandoned before being actually made.¹⁸

Firing mines or attempts.¹⁹

Firing ships or attempts.²⁰

The firing must not be the result of accident.²¹

Assault with intent to rob.²²

Actual violence is not necessary. Assaulting and threatening to charge with an infamous crime is within the section.²³

Bank-notes, exchequer bills, etc.; or paper-making,²⁴ receiving forged notes,²⁵ or making or engraving plates,²⁶ or moulds.²⁷ This applies to notes of a Scotch bank.²⁸

Bankrupt absconding with £20 and upwards.²⁹ This does not extend to a minor.³⁰

¹ *R. v. Probert*, 2 East, P. C. 1030; 42 L. J. M. C. 63; 21 W. R. 612; 28 R. v. Isaac, ib. 1031.

² *R. v. Salmon*, R. & R. 26.

³ 1 Hawk. c. 39, s. 17; 3 Inst. 66.

⁴ 24 & 25 Vict. c. 97, s. 7.

⁵ *R. v. Batstone*, 10 Cox C. C. 20.

⁶ *R. v. Child*, 1 C. C. R. 307; 40 L. J. M. C. 127; 24 L. T. 556.

⁷ 24 & 25 Vict. c. 97, s. 8. If frustrated by extraneous circumstances it is still an attempt—*R. v. Ring*, 66 L. T. 300. [S. 50 & 51 Vict. c. 35, s. 61.]

⁸ Sect. 9.

⁹ *R. v. Brown*, 3 F. & F. 821.

¹⁰ *R. v. M'Grath*, 14 Cox C. C. 598.

¹¹ 24 & 25 Vict. c. 97, s. 16.

¹² *R. v. Davy*, 1 Cox C. C. 60.

¹³ Sect. 17.

¹⁴ *R. v. Spencer*, 26 L. J. M. C. 16; 1 D. & B. 131; 5 W. R. 70.

¹⁵ *R. v. Satchwell*, L. R. 2 C. C. 21;

42 L. J. M. C. 63; 21 W. R. 612; 28 L. T. 569.

¹⁶ *R. v. Aris*, 6 C. & P. 348.

¹⁷ 24 & 25 Vict. c. 97, s. 18.

¹⁸ *R. v. Taylor*, 1 F. & F. 571.

¹⁹ 24 & 25 Vict. c. 97, ss. 26, 27.

²⁰ Sects. 43, 44.

²¹ *R. v. Faulkner*, 13 Cox, 550.

²² 24 & 25 Vict. c. 96, s. 42. [S. common law.]

²³ *R. v. Stringer*, 2 Moo. C. C. 261; 1 C. & K. 188.

²⁴ 24 & 25 Vict. c. 98, ss. 9, 10.

²⁵ s. 13.

²⁶ ss. 14, 17.

²⁷ s. 18.

²⁸ *R. v. Brackenbridge*, 1 C. C. R. 133; 37 L. J. M. C. 86; 18 L. T. 369; 16 W. R. 816.

²⁹ 32 & 33 Vict. c. 62, s. 12.

³⁰ *R. v. Wilson*, 5 Q. B. D. 28; 49 L. J. M. C. 13; 41 L. T. 480.

Bigamy.¹

It is sufficient if a person goes through the form and ceremony of a second marriage, though it be unlawful and void.² But a belief in good faith and on reasonable grounds that the husband or wife is dead is a good defence.³

Buoys, boats, etc., interfering with.⁴

Burglary.⁵

This must take place between 9 P.M. and 6 A.M. There must be a breaking, but it is not a breaking to open a window or aperture which is already open and should be fastened;⁶ but an entry by a chimney is a breaking.⁷ It may be on one night and the entry on another.⁸ It must take place in a dwelling-house, which includes every permanent building. The residence of caretakers is not sufficient,⁹ nor where the owner or occupier is not yet in actual occupation;¹⁰ outhouses must be connected with a covered way. There must be an entry¹¹ though with any part of the body, or an instrument is sufficient.¹²

Burglary by breaking out.¹³

This extends to the case of larceny by lodgers.¹⁴ On an attempt it is unnecessary to establish entry.¹⁵

Cattle, killing or maiming,¹⁶ etc.

Maiming without wounding must entail permanent injury.¹⁷ The wounding need not be done with an instrument,¹⁸ and it is sufficient if it be done recklessly.¹⁹

Children under thirteen, carnally abusing.²⁰

Consent is immaterial.²¹

Chloroform, administering with intent.²²

Choking, attempt, with intent.²³

Coin clippings, possessing.²⁴

Coin tools, etc., making.²⁵

¹ 24 & 25 Vict. c. 100, s. 57. [S. common law.]

² *R. v. Allen*, 1 C. C. R. 397; 41 L. J. M. C. 97; 20 W. R. 756; 26 L. T. 664; *R. v. Bawen*, 1 Cox C. C. 33; *R. v. Penon*, 5 C. & P. 412.

³ *R. v. Tolson*, 23 Q. B. D. 168; 58 L. J. M. C. 97; 60 L. T. 899; 37 W. R. 716.

⁴ 24 & 25 Vict. c. 97, s. 48.

⁵ *Ibid.*, c. 96, s. 51.

⁶ 1 Hale, 551; 3 Inst. 64; *R. v. Lewis*, 2 C. & P. 628; *R. v. Spriggs*, 1 M. & R. 357; *R. v. Swallow*, 2 Russ. C. & M. 9.

⁷ *R. v. Brice*, R. & R. 341.

⁸ 1 Hale, 551.

⁹ *R. v. Smith*, 2 E. P. C. 497; *R. v. Flannagan*, R. & R. 187.

¹⁰ *R. v. Hillard*, 2 E. P. C. 498; *R. v. Thompson*, *ib.*; 2 Leach, 771.

¹¹ 1 Hale, 551.

¹² *R. v. Davis*, R. & R. 499.

¹³ 24 & 25 Vict. c. 96, s. 51.

¹⁴ *R. v. Wheeldon*, 8 C. & P. 747; *R. v. Lawrence*, 4 *ib.* 231.

¹⁵ *R. v. Spanner*, 12 Cox C. C. 155.

¹⁶ 24 & 25 Vict. c. 97, s. 40. [S. common law.]

¹⁷ *R. v. Jeans*, 1 C. & K. 539; *R. v. Haywood*, 2 E. P. C. 1076; *R. & R.* 16.

¹⁸ *R. v. Bullock*, L. R. 1 C. C. 115; 37 L. J. M. C. 47; 16 W. R. 405; 17 L. T. 516.

¹⁹ *R. v. Welch*, 1 Q. B. D. 23; 45 L. J. M. C. 17; 13 Cox C. C. 121; 33 L. T. 753; 24 W. R. 280.

²⁰ 48 & 49 Vict. c. 69, s. 4.

²¹ *R. v. Beale*, L. R. 1 C. C. R. 10.

²² 24 & 25 Vict. c. 100, s. 22. [S. common law.]

²³ Sect. 21. [S. common law.]

²⁴ 24 & 25 Vict. c. 99, s. 5.

²⁵ Sect. 24.

This extends to a mould,¹ and to a galvanic battery.²
 Conveying tools or coins, etc., out of the mint.³
 Copper, counterfeiting or dealing in, having three or more pieces after previous conviction.⁴

Crime, accusing of, extorting by.⁵

The guilt or innocence of the party threatened is immaterial.⁶

Deer stealing.⁷

Desertion, army⁸ or navy.⁹

As to naval officers, it has been laid down that to be deserters they need not be borne on the books of a ship in commission.¹⁰

Embezzlement.¹¹

This offence is similar to larceny.¹² The sections do not apply to an overseer's assistant,¹³ but they do to a company director employed to collect moneys.¹⁴

Escape or aiding, in case of felony.¹⁵

Explosion with intent, or attempts,¹⁶ or making, or having possession of explosive substances under suspicious circumstances.¹⁷

Any part of a vessel which when filled with an explosive is adapted for causing explosion is within the section.¹⁸

As to extradition cases, it seems an open question whether a constable would be justified in arresting a fugitive on reasonable suspicion that he had committed a crime which would be felony if committed here.¹⁹

Foreign gold or silver, counterfeiting or dealing in.²⁰

Forgery.²¹

At common law this is the fraudulent making or alteration of a writing to the prejudice of another man's right.²² The slightest alteration of a genuine instrument in a material part whereby a new operation is given to it is sufficient.²³ The name forged may be that of a fictitious person,²⁴ provided the name be assumed for the purpose of fraud.²⁵ It must be of some document or writing, and does not

¹ *R. v. Weeks*, 30 L. J. M. C. 141; L. & C. 18; 4 L. T. 878.

² *R. v. Gover*, 9 Cox, 282.

³ 24 & 25 Vict. c. 99, s. 25. See *R. v. Harvey*, L. R. 1 C. C. 284; 40 L. J. M. C. 68.

⁴ 24 & 25 Vict. c. 99, ss. 14, 15.

⁵ *Ibid.*, c. 96, s. 47. [S. common law.]

⁶ *R. v. Cracknell*, 10 Cox C. C. 408; *R. v. Richards*, 11 *ib.* 43.

⁷ 24 & 25 Vict. c. 96, ss. 12, 13. [S. 1503, c. 69.]

⁸ 29 & 30 Vict. c. 109.

⁹ 44 & 45 Vict. c. 58.

¹⁰ *Hearson v. Churchill*, 1892, 2 Q. B. 144; 66 L. T. 843.

¹¹ 24 & 25 Vict. c. 96, ss. 68 and 70. [S. Hume i. 61.]

¹² See *post*, p. 44.

¹³ *R. v. Harris*, 69 L. T. 25.

¹⁴ *R. v. Stuart*, 1894, 1 Q. B. 310.

¹⁵ 4 Black, 130; 1 Hale, 23. An escaping felon can be slain if he cannot be otherwise overtaken, *ib.* 481; 2 *ib.* 218.

¹⁶ 24 & 25 Vict. c. 97, ss. 9, 10.

¹⁷ 46 Vict. c. 3, ss. 2-5.

¹⁸ *R. v. Charles*, 17 Cox. 499.

¹⁹ *R. v. Weil*, 9 Q. B. D. 701.

²⁰ 24 & 25 Vict. c. 99, ss. 18, 19, 21.

²¹ *Ibid.*, c. 98. There are a number of other Acts constituting this offence.

²² 4 Black, 247. [S. Hume i. 172.]

²³ 1 Hawk, c. 70, s. 2.

²⁴ *R. v. Lewis*, Fost. 116; *R. v. Bolland*, 3 E. P. C. 958.

²⁵ *R. v. Bontien*, R. & R. 260.

include painting an artist's name on a picture.¹ It must be uttered, offered or disposed of, although that to an innocent agent or accomplice is sufficient.²

Of Great Seal, powers of attorney, dividend warrants, etc.,³ transfers of stock,⁴ falsification of bank-books,⁵ forgery of India-bonds,⁶ or Exchequer bills.⁷

Of bank-notes.⁸

Of deeds, bonds, etc.⁹

This includes a fraudulent demise,¹⁰ a guarantee,¹¹ and post-office orders,¹² but not letters of ordination.¹³

Of wills.¹⁴

Of bills of exchange and promissory notes.¹⁵

This does not extend to forging an acceptance where the bill had not been signed by the drawer.¹⁶

Of orders and receipts for money.¹⁷

It is sufficient if the party to whom it is addressed has been in the habit of treating similar documents as orders.¹⁸ A guarantee,¹⁹ a dividend warrant,²⁰ and a pawnbroker's duplicate,²¹ are within the section. But not a request to pay money,²² nor a certificate that a person is gaining his livelihood by certain means.²³ It must be made by a person who might command the payment to a person who was compellable to obey it,²⁴ and it must purport to be directed to the person having possession of the money.²⁵

Of marriage licence.²⁶

It matters not that the marriage is void.²⁷

Of registers.²⁸

Obtaining money by forged instruments.²⁹

This includes telegrams.³⁰

Gold coin impairing, colouring to represent, counterfeiting or dealing in, having three or more pieces after previous conviction.³¹

¹ *R. v. Closs*, D. & B. 460; 27 L. J. M. C. 54.

² *R. v. Palmer*, 1 N. R. 96; R. & R. 72; *R. v. Giles*, 1 Moo. C. C. 166.

³ 24 & 25 Vict. c. 98, ss. 1, 4, 6.

⁴ s. 2.

⁵ s. 5.

⁶ s. 7.

⁷ s. 8.

⁸ Sect. 12.

⁹ Sect. 20.

¹⁰ *H. v. Ritson*, 1 C. C. R. 200; 30 L. J. M. C. 10.

¹¹ *R. v. Coelho*, 9 Cox C. C. 8.

¹² *R. v. Vanderstein*, 10 ib. 177.

¹³ *R. v. Morton*, 42 L. J. M. C. 58; L. R. 2 C. C. 22; 28 L. T. 452; 21 W. R. 629.

¹⁴ Sect. 21.

¹⁵ Sect. 22.

¹⁶ *R. v. Mopsey*, 11 Cox C. C. 143.

¹⁷ Sect. 23.

¹⁸ *R. v. Kay*, L. R. 1 C. C. 257; 39 L. J. M. C. 118.

¹⁹ *R. v. Joyce*, 1 L. & C. C. C. 576; 34 L. J. M. C. 168; 13 W. R. 662; 12 L. T. 351.

²⁰ *R. v. Autey*, 1 D. & B. C. C. 294; 26 L. J. M. C. 190.

²¹ *R. v. Fitchie*, 29 L. T. 99; 1 D. & B. C. C. 175; 26 L. J. M. C. 90.

²² *R. v. Thorn*, 2 Moo. C. C. 210; C. & M. 206.

²³ *R. v. Mitchell*, 2 F. & F. 44.

²⁴ *R. v. Clinch*, 2 E. P. C. 988.

²⁵ *Ibid.*

²⁶ Sect. 35.

²⁷ *R. v. Asplin*, 12 Cox C. C. 391.

²⁸ Sect. 36.

²⁹ s. 38.

³⁰ *R. v. Riley*, 74 L. T. 254.

³¹ 24 & 25 Vict. c. 99, ss. 2, 8, 4, 11.

Goods in manufacture, malicious injury to.¹

Grievous bodily harm, with intent to maim, resist apprehension, or by explosion.²

This applies to firing recklessly at a group;³ but not to a man who has communicated a venereal disease to his wife.⁴

Hopbonds destroying.⁵

Housebreaking or attempt.⁶

This is the same as burglary other than in the night-time.⁷

Larceny.⁸

At common law this is the wrongful or fraudulent taking or carrying away the personal goods of another from any place with a felonious intent to convert them to the taker's own use, and make them permanently his own property without the consent of the owner.⁹

Wherever there is a *bonâ fide* claim of right, however groundless, it is no felony,¹⁰ and the intention to steal is of the essence of the act.¹¹ Where one sells an article and then snatches it back he cannot be convicted,¹² but where he takes money before a fraudulent transaction is completed it is otherwise.¹³ There must be a taking either actual or constructive.¹⁴ As to goods lost, if the finder appropriates them believing that the owner can be found, it is larceny;¹⁵ but not on a subsequent appropriation with such knowledge.¹⁶ Where the owner of his own free will parts with the *property* there is no larceny, however fraudulent were the means employed;¹⁷ but this does not apply to a trick or artifice.¹⁸ There must be a carrying away; but a bare removal is sufficient.¹⁹

Of horses, cows, sheep,²⁰ or killing with intent to steal carcase,²¹ or hunting or snaring deer after previous conviction²² in unenclosed part of forest or hunting or snaring in enclosed part.²³

Of oysters in fishery.²⁴

Of bonds, bills, notes, etc.²⁵

¹ 24 & 25 Vict. c. 97, s. 14. [S. common law.]

² 24 & 25 Vict. c. 100, ss. 18, 28-30. [S. 10 Geo. IV. c. 38.]

³ *R. v. Fretwell*, 33 L. J. M. C. 128; 12 W. R. 751; 10 L. T. 428.

⁴ *R. v. Clarence*, 22 Q. B. D. 23; 58 L. J. M. C. 10; 59 L. T. 780; 37 W. R. 166.

⁵ 24 & 25 Vict. c. 97, s. 19.

⁶ *Ibid.*, c. 96, ss. 56, 57. [S. Hume i. 89.]

⁷ *Ante*, p. 41.

⁸ 24 & 25 Vict. c. 96.

⁹ 2 East, P. C. c. 16, s. 2. See *R. v. Ashwell*, 16 Q. B. D. 190; *R. v. Hehir*, 1895. C. L. Ir. 709. [S. Hume i. 77.]

¹⁰ 1 Hale, 509.

¹¹ *R. v. Crump*, 1 C. & P. 658. [S. Hume i. 68.]

¹² *Hewson v. Gamble*, 56 J. P. 584.

¹³ *R. v. Russett*, 1892, 2 Q. B. 812; 67 L. T. 124.

¹⁴ 1 Hale, 514. [S. Hume i. 75.]

¹⁵ *R. v. Thurborn*, 1 Den. 388; 2 C. & K. 831.

¹⁶ *R. v. Pearson*, 2 Den. 353; 21 L. J. M. C. 41; *R. v. Mathews*, 12 Cox, 489.

¹⁷ *R. v. Macgrath*, L. R. 1 C. C. 205; 39 L. J. M. C. 7; 2 E. P. C. 668; *R. v. Lovell*, 8 Q. B. D. 185; *R. v. Adams*, R. & R. 225.

¹⁸ *R. v. Middleton*, L. R. 2 C. C. 38; 42 L. J. M. C. 73; *R. v. Hollis*, 12 Q. B. D. 25.

¹⁹ 4 Bl. 231.

²⁰ 24 & 25 Vict. c. 96, s. 10.

²¹ s. 11.

²² s. 12.

²³ s. 13.

²⁴ Sect. 26. [S. 3 & 4 Vict. c. 74.]

²⁵ Sects. 27, 28.

Of wills and codicils.¹

Of records or other legal documents.²

This extends to the case of depriving an officer of the law of his warrant.³

Of metal, glass, etc., fixed to house or land.⁴

Of trees in pleasure-ground to the value of £1, or elsewhere £5.⁵

Of ore, metal, coal, etc.⁶

Of goods in dwelling-house to the value of £5,⁷ or with menaces.⁸

Of goods in process of manufacture,⁹ from ships, docks, or wharfs,¹⁰ or wreck.¹¹

By clerks and servants.¹²

This constitutes embezzlement.¹³ It applies to a female servant,¹⁴ and an apprentice though under age,¹⁵ and a son acting as clerk,¹⁶ and is not confined to servants of persons in trade.¹⁷ The mode by which the defendant is remunerated is immaterial.¹⁸ A commercial traveller is within the section;¹⁹ but not a commission agent.²⁰ The employment need not be permanent;²¹ but for a single purpose is not sufficient.²²

By public officers.²³

Of fixtures by tenants.²⁴

Machines, malicious injury to.²⁵

The destruction of any part whether it works or not,²⁶ is within the section;²⁷ but if a part be destroyed through fear the remaining parts are not so.²⁸ It extends to ploughs and water-wheels,²⁹ and the damage need not be permanent.³⁰

Manslaughter.³¹

¹ Sect. 29.

² Sect. 30.

³ *R. v. Bailey*, L. R. 1 C. C. 347; 41 L. J. M. C. 61; 25 L. T. 882; 20 W. R. 301.

⁴ Sect. 31. [S. 4 Geo. II. c. 32.]

⁵ Sect. 32.

⁶ Sect. 38.

⁷ Sect. 60.

⁸ Sect. 61.

⁹ Sect. 62.

¹⁰ Sect. 63.

¹¹ Sect. 64.

¹² Sect. 67.

¹³ *R. v. Gibbs*, D. C. C. 445; 24 L. J. M. C. 62.

¹⁴ *R. v. Smith*, R. & R. 267.

¹⁵ *R. v. Mellish*, *ib.* 80.

¹⁶ *R. v. Foulkes*, L. R. 2 C. C. 150; 44 L. J. M. C. 65.

¹⁷ *R. v. Squire*, R. & R. 349; *R. v. Townsend*, 1 Dea. 167; 2 C. & K. 168; *R. v. Adey*, 1 Den. 578; 19 L. J. M. C. 149.

¹⁸ *R. v. Carr*, R. & R. 198; *R. v. Higgins*, *ib.* 145.

¹⁹ *R. v. Bailey*, 12 Cox, 56; *R. v. Tite*, L. & C. 29; 30 L. J. M. C. 142.

²⁰ *R. v. Bowers*, L. R. 1 C. C. 41; 35 L. J. M. C. 266.

²¹ *R. v. Spencer*, R. & R. 299; *R. v. Smith*, *ib.* 516.

²² *R. v. Nettleton*, 1 Moo. C. C. 259.

²³ Sects. 69-73. Not applicable to county court bailiffs: *R. v. Parsons*, 16 Cox C. C. 498.

²⁴ Sect. 74.

²⁵ 24 & 25 Vict. c. 97, s. 15. [S. common law.]

²⁶ *R. v. Bartlett*, 2 Deac. C. L. 1517.

²⁷ *R. v. Mackerel*, 4 C. & P. 448.

²⁸ *R. v. West*, 2 D. C. L. 1518.

²⁹ *R. v. Gray*, L. & C. 365; 33 L. J. M. C. 78; 9 L. T. 733; 12 W. R. 350; *R. v. Fidler*, 4 C. & P. 449.

³⁰ *R. v. Fisher*, L. R. 1 C. C. 7; 35 L. J. M. C. 57. [S. 56 Geo. III. c. 125.] I. 5 & 6 Vict. c. 28.

³¹ 4 Black, 193.

This is (1) involuntary—where a man doing an unlawful act not amounting to felony by accident kills another, or where by culpable neglect of duty he is the cause of the death of another, or (2) voluntary—where in a sudden quarrel two persons fight, and one of them kills the other, or where a man greatly provokes another by some personal violence and the other immediately kills him.¹

Mines, malicious injury.²

If a workman stop up an air-way by order of the master it is no felony unless done maliciously.³ If the act be done under a *bonâ fide* claim of right it is not within the section.⁴

Murder or attempts.⁵

At common law this is where a person of sound memory and discretion unlawfully killeth any reasonable being, and under the king's peace with malice aforethought, express or implied.⁶

A revolver loaded, but not in the chamber below the hammer, is within section 14 of 24 and 25 Vic. c. 100 which includes offences with loaded arms.⁷

Mutiny.⁸

Oaths unlawful.⁹

This extends to oaths of secret societies and to unlawful combinations.¹⁰

Penal servitude, at large during period of.¹¹

Personation at elections, of bail, owners of stock, soldiers, sailors, etc., to obtain property.¹²

Piracy.¹³

Poison, administering with intent or so as to endanger.¹⁴

Prison, breach of, or rescue, if for felony.¹⁵

Prisoner of war, aiding to escape.¹⁶

Railway, injuring with intent to obstruct, or endangering safety of passengers.¹⁷

Rape.¹⁸

This must take place by force, and without consent, and if the consent be through fear or duress it is void.¹⁹ So also is it if obtained by fraud.²⁰ There must be penetration.²¹

¹ Arch. C. C. 21st ed., p. 715.

² 24 & 25 Vict. c. 97, s. 28.

³ *R. v. James*, 8 C. & P. 131.

⁴ *R. v. Matthews*, 14 Cox C. C. 5.

⁵ 24 & 25 Vict. c. 100, ss. 11-15; *R. v. Burgess*, L. & C. 258; 32 L. J. M. C. 55.

⁶ 3 Inst. 47.

⁷ *R. v. Jackson*, 17 C. C. C. 114. [S. see 10 Geo. IV. c. 38.]

⁸ 37 Geo. III. c. 70, s. 1; 44 & 45 Vict. c. 58, s. 7.

⁹ 37 Geo. III. c. 128, s. 1; 52 Geo. III. c. 104, s. 1.

¹⁰ *R. v. Marks*, 3 East, 157.

¹¹ 5 Geo. IV. c. 84, s. 22. I. 9 *ib.* c. 54.

¹² 2 & 3 Will. IV. c. 53, s. 49; 24 & 25 Vict. c. 98, ss. 3, 34; 28 & 29 Vict. c.

124, s. 8; 30 & 31 Vict. c. 131, s. 35; 33 & 34 Vict. c. 58, s. 4; 37 & 38 Vict. c. 36, s. 1; 46 & 47 Vict. 51, s. 6. [S. Hume i. 177.]

¹³ 7 Will. IV. and 1 Vict. c. 88. [S. Hume i. 481.]

¹⁴ 24 & 25 Vict. c. 100, s. 11.

¹⁵ 1 Hale, 612; 1 & 2 Geo. IV. c. 88, s. 1.

¹⁶ 16 Geo. II. c. 31.

¹⁷ 24 & 25 Vict. c. 97, s. 35.

¹⁸ *Ibid.*, c. 100, s. 48.

¹⁹ 1 Hawk. c. 41, s. 6. [S. Hume i. 301.]

²⁰ *R. v. Flattery*, 2 Q. B. D. 410; 46 L. J. M. C. 130; 48 & 49 Vict. c. 69, s. 4.

²¹ *R. v. Hill*, 1 East, P. C. 439.

Rescue of a traitor or felon from custody,¹ after conviction.²
 Riot,³ or opposing making of proclamation.
 There must be some sort of resistance to lawful authority.⁴
 River- or sea-banks, interfering with, or opening sluices.⁵
 Robbery from the person,⁶ or assault with intent,⁷ or by person armed, or by two or more.⁸
 Sacrilege, or attempt.⁹
 The vestry is part of the church for this purpose.¹⁰
 Signals, altering.¹¹
 Silver coin, impairing, colouring to represent, counterfeiting, or dealing in counterfeit.¹²
 Slave trade offences.¹³
 Smuggling; shooting at vessels of Her Majesty, six or more persons together, three or more armed and assembled, two or more armed or disguised, wounding officers.¹⁴
 The shooting must be malicious. Firing on a pursuing revenue vessel sailing without proper ensign is not¹⁵ within the section.
 Stolen property, receiving or taking reward to help to.¹⁶
 The principal offender need not have been indicted,¹⁷ and the receipt need not be direct from the thief.¹⁸
 Stores, public, obliterating marks.¹⁹
 Threatening letter, sending, or extorting by.²⁰
 Treason or treason-felony.²¹
 Trees, destroying.²²
 Unnatural crime, or attempt.²³
 The evidence is as in rape, but (1) it is not necessary to negative consent, and (2) both parties if patient do consent are equally guilty,²⁴ except the patient, if a boy, be under fourteen, or if a girl, under twelve.²⁵ It may be committed with animals, and this includes a domestic fowl.²⁶

¹ 1 Hale, 607; 1 Geo. IV. c. 88, s. 1.
 I. 59 Geo. III. c. 92.

² 2 Hawk. c. 21, s. 8.

³ 1 Geo. I. stat. 2, c. 5, prosecution must be within twelve months. I. 5 & 6 Vict. c. 28.

⁴ *R. v. Hunt*, 1 Cox C. C. 177; *R. v. Atkinson*, 11 *ib.* 390.

⁵ 24 & 55 Vict. c. 97, s. 30. [S. common law.]

⁶ 24 & 25 Vict. c. 96, s. 40.

⁷ s. 42.

⁸ s. 43.

⁹ Sect. 50.

¹⁰ *R. v. Evans*, C. & M. 298.

¹¹ 24 & 25 Vict. c. 97, s. 47.

¹² 24 & 25 Vict. c. 99, ss. 2-4.

¹³ 5 Geo. IV. c. 118; 36 & 37 Vict. c. 88.

¹⁴ 39 & 40 Vict. c. 36, s. 198.

¹⁵ *R. v. Reynolds*, R. & R. 465.

¹⁶ 24 & 25 Vict. c. 96, ss. 91, 100.

¹⁷ *R. v. Jervis*, 9 C. & P. 156; *R. v. Pulham*, *ib.* 280.

¹⁸ *R. v. Reardon*, L. R. 1 C. C. 81; 35 L. J. M. C. 171; 14 L. T. 499; 14 W. R. 663.

¹⁹ 38 & 39 Vict. c. 25, s. 5.

²⁰ 24 & 25 Vict. c. 100, s. 16; 24 & 25 Vict. c. 96, ss. 44-47. See cases under "Crime," *supra*, and *R. v. Tomlinson*, 1895, 1 Q. B. 706; 72 L. T. 155.

²¹ 25 Edw. III. stat. 5, c. 2; 11 & 12 Vict. c. 12, s. 3. Treason must be prosecuted within three years, unless against the person of the sovereign. 7 & 8 Will. III. c. 3.

²² 24 & 25 Vict. c. 96, ss. 32, 33.

²³ 24 & 25 Vict. c. 100, s. 61.

²⁴ *R. v. Wiseman*, Fort. 91.

²⁵ 1 Hale, 670; 3 Inst. 59.

²⁶ *R. v. Brown*, 24 Q. B. D. 357.

Vessels, injuring by explosion or otherwise.¹

Wreck, impeding escape from, or interfering with.²

There are statutes which authorise constables to arrest offenders provided they are "found committing" any offence against those Acts by such constable. These, in this class, are the following:—

With regard to what is the meaning of this term, it appears that the words "found committing" must be construed strictly.³ An arrest cannot take place a little time afterwards,⁴ much less after an interval of two or three hours.⁵ But an offence may be being committed at a place other than that of its inception, as in the case of a thief still in possession of property recently stolen. In such case he is found committing.⁶

Counterfeiting foreign coin other than gold or silver.⁷

Exporting counterfeit coin.⁸

Possessing three or more pieces of counterfeit coin,⁹ or more than five pieces of foreign counterfeit with intent.¹⁰

Uttering counterfeit gold or silver,¹¹ or uttering, accompanied by possession of other counterfeit coin, or followed by a second uttering,¹² or uttering foreign medals, etc., with intent,¹³ or foreign counterfeit gold or silver¹⁴ or base copper coin.¹⁵

There need be no impression,¹⁶ and genuine money which has been filed is within the section.¹⁷ "Ringing the changes" is an uttering,¹⁸ but it is doubtful whether it is so in the case of money given in charity.¹⁹

Defacing coin by stamping words thereon.²⁰

Tendering such defaced coin.²¹

It need not be accepted to complete the offence.²²

Under the Industrial Schools Act, children apparently under fourteen may be arrested for begging, wandering, being destitute, or frequenting the company of reputed thieves.²³ And children escaping from such school.²⁴

¹ 24 & 25 Vict. c. 97, ss. 45, 46.

² *Ibid.*, c. 100, s. 17. [S. Hume i. 482.]

³ *R. v. Phelps*, C. & M. 180; 1 Russ. Cr. 715.

⁴ *Simmons v. Milligen*, 2 C. B. 524; 10 Jur. 224; 15 L. J. C. P. 102.

⁵ *Downing v. Capel*, 36 L. J. M. C. 97; L. R. 2 C. P. 461; 16 L. T. 323; *Leete v. Hart*, 37 L. J. C. P. 157; L. R. 3 C. P. 322.

⁶ *Griffith v. Taylor*, L. R. 2 C. P. D. 194; 25 W. R. 196.

⁷ 24 & 25 Vict. c. 99, s. 22.

⁸ Sect. 8.

⁹ Sect. 11.

¹⁰ Sect. 23, and see *R. v. Owen*, 53 J. P. 822.

¹¹ Sect. 9.

¹² Sect. 10.

¹³ Sect. 13.

¹⁴ Sect. 20.

¹⁵ Sect. 15.

¹⁶ *R. v. Welsh*, 1 East, P. C. 87, 164; 1 Leach, C. C. 364; *R. v. Wilson*, *ib.* 285.

¹⁷ *R. v. Herrmann*, 4 Q. B. D. 284; 48 L. J. M. C. 106; 27 W. R. 475; 40 L. T. 263.

¹⁸ *R. v. Franks*, 2 Leach, 736.

¹⁹ *R. v. Page*, 8 C. & P. 122; *R. v. —*, 1 Cox, 250, and see *R. v. Ion*, 2 Den. C. C. 484.

²⁰ 24 & 25 Vict. c. 99, s. 16.

²¹ Sect. 17.

²² *R. v. Radford*, 1 Den. 59; *R. v. John*, 2 *ib.* 495; 21 L. J. M. C. 166.

²³ 29 & 30 Vict. c. 118, s. 14. [*Wilson*, 1 R. J. C. 8; *Hay*, 2 *Irv.* 333.]

²⁴ s. 33. I. 31 & 32 Vict. c. 25, s. 26.

The Larceny Act¹ is extended to naval² and public stores.³
The offences are :—

Larceny after a conviction for felony,⁴ or indictable misdemeanour.⁵

Inducing to execute a deed by fraud.⁶

Dog-stealing,⁷ or possession of stolen dogs,⁸ or taking money to restore.⁹

Embezzlement by agents,¹⁰ bankers, attorneys, etc.¹¹

Trust money paid off from a mortgage and in the hands of a solicitor is within the section,¹² but money simply lent for investment is not.¹³

By factors,¹⁴ trustees,¹⁵ directors,¹⁶ directors keeping fraudulent accounts,¹⁷ destroying books,¹⁸ or publishing fraudulent statements.¹⁹
Setting engines for deer.²⁰

Obtaining money, chattels, or security by false pretences.²¹

This includes a railway ticket,²² and an order on the treasurer of a burial society,²³ but not a dog.²⁴ The goods need not be in existence at the time if they are subsequently delivered.²⁵

Stealing fences.²⁶

Taking fish in land belonging to dwelling-house, other than angling in the daytime.²⁷

Stealing fruit.²⁸

Killing hares, etc., in warren.²⁹

Stealing oysters from beds.³⁰

Shipwrecked goods, in possession without satisfactory account³¹—offering for sale.³²

Simple larceny.³³

This includes “ringing the changes”.³⁴

¹ 24 & 25 Vict. c. 96. [S. common law.] I. see also 14 & 15 Vict. c. 92, ss. 4-6.

² 32 & 33 Vict. c. 12, s. 10.

³ 38 & 39 Vict. c. 25, s. 12. See 6 & 7 Vict. c. 40, s. 9.

⁴ 24 & 25 Vict. c. 96, s. 7.

⁵ s. 8.

⁶ s. 90.

⁷ s. 18.

⁸ s. 19.

⁹ s. 20.

¹⁰ s. 75, *R. v. Bowerman*, 39 W. R. 207.

¹¹ s. 76. [S. 2 & 3 Will. IV. c. 4.]

¹² *R. v. Fullagar*, 14 Cox C. C. 370; 41 L. T. 448; 44 J. P. 57.

¹³ *R. v. Newman*, 8 Q. B. D. 706; 51 L. J. M. C. 87; 46 L. T. 394; 20 W. R. 550; *Cf. R. v. Christian*, L. R. 2 C. C. 94; 43 L. J. M. C. 1; 24 L. T. 654; 22 W. R. 132.

¹⁴ Sect. 78.

¹⁵ Sect. 80.

¹⁶ Sect. 81.

¹⁷ Sect. 82.

¹⁸ Sect. 83.

¹⁹ Sect. 84.

²⁰ Sect. 15.

²¹ Sect. 88: *R. v. Jones*, 77 L. T. 503.

²² *R. v. Boulton*, 1 Den. C. C. 508; 19 L. J. M. C. 67.

²³ *R. v. Greenhalgh*, 1 D. C. C. 267; 6 Cox C. C. 257.

²⁴ *R. v. Robinson*, 28 L. J. M. C. 58.

²⁵ *R. v. Martin*, 1 C. C. R. 56; 36 L. J. M. C. 20; 15 W. R. 358; 15 L. T. 54; *Young v. The King*, 3 T. R. 98.

²⁶ 24 & 25 Vict. c. 96, s. 34.

²⁷ Sect. 24.

²⁸ Sect. 36.

²⁹ Sect. 17.

³⁰ Sect. 26. [S. 3 & 4 Vict. c. 74.]

³¹ Sect. 65.

³² Sect. 66.

³³ Sect. 4.

³⁴ *R. v. Hollis*, 12 Q. B. D. 25.

Stealing domestic animals or birds,¹ or found in possession without satisfactory account.²

Tree stealing.³

Stealing vegetables.⁴

Found in possession of venison without giving satisfactory account.⁵

Found in possession of wood similarly.⁶

Receiving any of the above.⁷

As to offences against the Malicious Damage Act, the damage done must be more than nominal, and done with intent to damage.⁸ A trespass can only be wilful and malicious when it is committed by a person who knows he has no pretence of right to enter the land,⁹ and does not extend to playing bowls on the turf,¹⁰ nor placing poisoned flesh on enclosed land.¹¹

The offences are :—

Killing or maiming animals.¹²

Rioters injuring buildings.¹³

Destroying dams¹⁴ or fences.¹⁵

Poisoning fish.¹⁶

Destroying fruit in gardens¹⁷ or elsewhere.¹⁸

Making gunpowder with intent.¹⁹

Injuring telegraphs²⁰ or attempts.²¹

Injury by tenants.²²

Obstructing trains.²³

Changing a signal²⁴ or stopping by holding up one's arms is within the section.²⁵

Damaging trees.²⁶

Destroying vegetables in gardens²⁷ or elsewhere.²⁸

Destroying works of art.²⁹

Any damage over £5.³⁰

¹ Sect. 21.

² Sect. 22.

³ Sect. 33. I. 25 & 26 Vict. c. 50.

⁴ Sect. 37. [S. 13 Geo. III. c. 32.]

⁵ Sect. 14.

⁶ Sect. 35.

⁷ Sect. 95; 103.

⁸ *Eley v. Lytle*, 50 J. P. 308; *R. v. Pemberton*, L. R. 2 C. C. 119; 43 L. J. M. C. 912; see *R. v. Welch*, 1 Q. B. D. 23; 45 L. J. M. C. 17, and *Hall v. Richardson*, 54 J. P. 345.

⁹ *Looker v. Halcomb*, 4 Bing. 183; 12 Moo. 416; *Usher v. Luzmore*, 62 L. T. 110; 38 W. R. 254.

¹⁰ *Laws v. Eltringham*, 51 L. J. M. C. 13; 8 Q. B. D. 283; 46 L. T. 64.

¹¹ *Daniel v. James*, 2 C. P. D. 351.

¹² 24 & 25 Vict. c. 97, s. 41. There are other acts constituting this offence. [S. common law.] I. see also 14 & 15 Vict. c. 92, ss. 1, 2.

¹³ Sect. 12. [S. 52 Geo. III. c. 130.]

¹⁴ Sect. 32.

¹⁵ Sect. 25.

¹⁶ Sect. 32.

¹⁷ Sect. 23.

¹⁸ Sect. 24. I. 1 & 2 W. IV. c. 44.

¹⁹ Sect. 54.

²⁰ Sect. 37.

²¹ Sect. 38.

²² Sect. 13.

²³ Sect. 36.

²⁴ *R. v. Hadfield*, 39 L. J. M. C. 131; L. R. 1 C. C. 253; 18 W. R. 955; 22 L. T. 664.

²⁵ *R. v. Hardy*, 40 L. J. M. C. 62; L. R. 1 C. C. 278; 19 W. R. 359; 23 L. T. 785.

²⁶ Sect. 22.

²⁷ Sect. 23.

²⁸ Sect. 24. [S. 13 Geo. III. c. 32.]

²⁹ Sect. 39.

³⁰ Sect. 51; *R. v. Clemens*, 78 L. T. 204. See also s. 52 as to any other damage, and *Roper v. Knott*, 1898, 1 Q. B. 868.

Aiding or abetting any of these.¹

Persons dealing with or purchasing military stores, etc., from soldiers are also liable.²

And those found committing indictable offences³ in the night-time.⁴

Three persons or more, any of such persons being armed, entering land for the purpose of taking game or rabbits at night may be arrested.⁵ All the persons need not have entered the land.⁶

A constable concurring in pursuit or hue and cry after an alleged felon is justified in arresting whether the party be innocent or a felony be committed or not.⁷

Indecent exposure in a public place.⁸

It is not necessary that the place be open to the public,⁹ and they may even be trespassers.¹⁰ But it must take place in the presence of more than one person.¹¹ An omnibus,¹² a urinal,¹³ and a booth at races¹⁴ is a place, and bathing without covering is an offence.¹⁵

Offenders escaping from a reformatory are liable to arrest.¹⁶

And so are persons who rescue or attempt to rescue persons from custody, or who obstruct officers.¹⁷

A rout is a meeting of three or more upon a purpose which if executed would make them rioters and which they actually make a motion to execute.¹⁸

Persons signalling to smugglers may be arrested.¹⁹

Constables are required to assist the receiver in case of wreck.²⁰

Entry.—They may enter on lands to prevent any signal being made to smugglers.²¹

And they are required to assist in the execution of a warrant to break open under the Tax Act.²²

¹ Sects. 63 and 61.

² 44 & 45 Vict. c. 58, s. 156. *Laws v. Read*, 63 L. J. Q. B. 683.

³ See *ante*, p. 21.

⁴ 9 P.M. to 6 A.M.; 14 & 15 Vict. c. 19, s. 11.

⁵ 9 Geo. IV. c. 69, s. 9. I. see 7 *ib.* c. 9.

⁶ *R. v. Whitaker*, 17 L. J. M. C. 127; *R. v. Vezzell*, 20 *ib.* 192; *R. v. Wood*, 25, *ib.* 96.

⁷ Hawk. P. C. 62; 50 & 51 Vict. c. 55, s. 8. [S. 1662, c. 6.]

⁸ See 14 & 15 Vict. c. 100, s. 29. [S. common law.]

⁹ *R. v. Thallman*, 33 L. J. M. C. 58; 9 L. T. 425.

¹⁰ *R. v. Wellard*, 14 Q. B. D. 63; 54 L. J. M. C. 14.

¹¹ *R. v. Webb*, 18 L. J. M. C. 39; 2 C. & K. 993; *R. v. Watson*, 2 C. C. C.

376. But see *R. v. Elliott*, L. & C. 103, and as to baths 41 & 42 Vict. c. 14, s. 11.

¹² *R. v. Holmes*, 6 C. C. C. 216; 22 L. J. M. C. 122.

¹³ *R. v. Harris*, L. R. 1 C. C. 282; 40 L. J. M. C. 67.

¹⁴ *R. v. Saunders*, 1 Q. B. D. 1; 45 L. J. M. C. 11.

¹⁵ *R. v. Reed*, 11 C. C. C. 689; *R. v. Crunden*, 2 Camp. 89.

¹⁶ 29 & 30 Vict. c. 117, s. 21; 61 & 62 Vict. c. 60, s. 11. I. 31 & 32 Vict. c. 59.

¹⁷ 48 & 49 Vict. c. 75, s. 2; 24 & 25 Vict. c. 100, s. 38.

¹⁸ 4 Black. 146.

¹⁹ 39 & 40 Vict. c. 36, s. 190.

²⁰ 57 & 58 Vict. c. 60, s. 514.

²¹ 39 & 40 Vict. c. 36, s. 192.

²² 43 & 44 Vict. c. 19, s. 86.

Search.—There is no statutory power to search a person on his arrest and it is not certain that there is such power at common law. In practice, however, a person apprehended for felony is searched as well as the room or lodging where he is taken or happens to be living.¹ In the latter case a warrant seems necessary.

Seizure and Detention.—Where a person is arrested for felony or misdemeanour any property in his possession, believed to have been used by him for the purpose of committing the offence, may be seized and detained as evidence, and if necessary may be taken from him by force provided no unnecessary violence is used.²

Counterfeit coin and coining tools, etc., are seizable.³

If any goods liable to customs duties or prohibited to be imported are stopped on suspicion of felony they may be taken to the same station-house as the offender.⁴

A similar power extends to goods seized under the Excise Laws, but forfeited goods are to be taken to the excise office.⁵

GAOLERS.

These officers have while acting the same powers, authorities, protection, and privileges as constables.⁶

As to criminal prisoners, no cell is to be used for the separate confinement of a prisoner unless certified to be fit by the inspector, and furnished with the means of enabling the prisoner to communicate at any time with an officer.⁷

The gaoler can only order confinement in a punishment-cell for twenty-four hours. Punishments can only be awarded by the gaoler or a justice.⁸

Prisoners may be brought up for trial or removed.⁹

CUSTOMS.

The inherent powers of customs officers are the following :—

Officers employed to prevent smuggling¹⁰ may haul their vessels on the shore (not being a garden or pleasure-ground, or place

¹ *Dillon v. O'Brien*, 16 C. C. C. 245. [S. same. See Macdonald Cr. L.]

² *Ib.*, and see *Tyler v. L. & S. W. Ry.*, 1 C. & E. 285; *Warne v. Varley*, 6 T. R. 443. [*Mauchline v. Stevenson*, 5 R. J. C. 21.]

³ 24 & 25 Vict. c. 99, s. 27.

⁴ 39 & 40 Vict. c. 86, s. 206.

⁵ 7 & 8 Geo. IV. c. 53, ss. 35, 108.

⁶ 61 & 62 Vict. c. 41, s. 10.

⁷ 28 & 29 Vict. c. 126, s. 18. In S. and I. these matters are dealt with by rules; and see 61 & 62 Vict. c. 41, s. 2 as to E.

⁸ Sect. 43; 61 & 62 Vict. c. 41, ss. 5, 7.

⁹ Sect. 63.

¹⁰ These words include coastguard, excise and constables. As to the power of the Crown to erect beacons, light-houses and sea-marks, and to enter on lands for that purpose, see 3 Inst. 204, 4 *ib.* 148, and 57 & 58 Vict. c. 60, s. 636. As to shooting-ranges or coast defence, see 55 & 56 Vict. c. 43, and 5 & 6 Vict. c. 94, s. 16—*Harvey v. Harkin*, 1898, 2 I. R. 65.

ordinarily used for any bathing-machine),¹ or may patrol the coasts (not being a garden or pleasure-ground).²

Customs officers may board any ship arriving in port, and stay on board until all the goods laden therein are delivered therefrom, or until her departure, and shall have free access to every part thereof.³ So also may they, after clearance outwards, within the limits of the port, or within one league of the coast; ⁴ and any ship carrying false colours in order to remove them.⁵

They may after boarding demand all documents which ought to be on board, and require them to be brought for inspection,⁶ and where the ship has cleared, the clearance.⁷

The officers may search ships, or rummage all parts thereof, for uncustomed or prohibited goods; ⁸ and those employed to prevent smuggling may search persons on board any ship or boat in port, or who shall have landed therefrom, if they have reason to suppose they are carrying uncustomed or prohibited goods.⁹ Such a person may require first to be taken before a justice or collector, or other superior customs officer, who may either discharge him or direct the search. And a female is to be searched only by a female.¹⁰

If the keys be withheld, the examining or superior officer may open any place, box, or chest.¹¹ The officers may break packages for exportation, the contents of which are unknown,¹² and examine all goods shipped or brought for shipment.¹³

They may also fasten down hatchways.¹⁴

All goods on board, and all goods lading or unlading, may be examined.¹⁵ And officers employed to prevent smuggling may on reasonable suspicion or probable cause stop and examine any cart or other conveyance to ascertain whether any smuggled goods are contained therein.¹⁶

They may take samples of margarine imported into or manufactured in the kingdom, if they have reason to believe that the provisions of the Act are infringed by conveyance under another title.¹⁷ And also of tea imported; and if they find it mixed with other substances, or exhausted tea, shall not deliver it unless with the sanction of the Commissioners, and if it be unfit for food, it may be destroyed.¹⁸

¹ 39 & 40 Vict. c. 36, s. 194.

² Sect. 196.

³ Sects. 47, 147, 182. As to commissioned ships, see s. 52.

⁴ Sect. 134.

⁵ 57 & 58 Vict. c. 60, s. 73.

⁶ 39 & 40 Vict. c. 36, sect. 147. And see 44 & 45 Vict. c. 12, s. 11; and 47 & 48 Vict. c. 62, s. 3.

⁷ 39 & 40 Vict. c. 36, s. 134.

⁸ Sects. 147, 182. As to commissioned ships, see s. 52.

⁹ 44 & 45 Vict. c. 12, s. 12.

¹⁰ 39 & 40 Vict. c. 36, s. 185. If the

officer shall without reasonable ground cause any person to be searched, he shall forfeit £10.

¹¹ Sect. 47.

¹² Sect. 54.

¹³ Sect. 102. As to salmon parcels, see 28 & 29 Vict. c. 121, s. 65. [S. 31 & 32 Vict. c. 128, s. 22.]

¹⁴ Sect. 47.

¹⁵ Sect. 147.

¹⁶ Sect. 203.

¹⁷ 50 & 51 Vict. c. 29, s. 8.

¹⁸ 38 & 39 Vict. c. 63, s. 30.

Where a power to seize is conferred by statute, it must be exercised strictly; and if the seizure extend to property to which the power does not apply, although in the judgment of the officer it did apply, it is no justification.¹

All officers employed in the prevention of smuggling may seize all ships, boats, goods, carriages, or other conveyances, and horses, animals, and things liable to forfeiture, and all persons liable to be detained, in any place on land or water.² And for this purpose they may apparently go outside the usual limits of their jurisdiction.³ There can be no alienation so as to avoid forfeiture.⁴ But no ship is to be liable to forfeiture unless under 250 tons.⁵ In such cases the Commissioners may fine, and require a sum not exceeding £500 to be deposited with the Collector. In default, the ship may be detained.⁶ The goods in such ship are still liable to forfeiture.⁷

Ships unduly assuming British character, or concealing British or assuming foreign character, or owner acquiring ownership if unqualified, or making false declaration of ownership, are liable to seizure.⁸ And steamships not built according to rules may be detained,⁹ and ships with insufficient medical stores.¹⁰

If a foreign ship having had goods on board liable to seizure has unshipped at more than one league from the coast, she is liable to forfeiture, but only by coming within the distance during the same voyage.¹¹

Goods, etc., prohibited or restricted are :—

Arms, etc., proclaimed¹²; beer¹³; books, copyright, cards; cattle or hides proclaimed¹⁴; chicory; chloral hydrate, chloroform, chocolate, clocks, cocoa, coffee; coin, false or foreign proclaimed¹⁵; collodion; ether; ethyl, iodide of; explosives¹⁶; Foreign Enlistment Act, ships liable under¹⁷; foreign manufactured articles, etc.; postal packages¹⁸; foreign prison-made goods¹⁹; fruit; malt extract; Merchandise Marks Act, goods liable under²⁰; rum; naphtha; prints, indecent; salmon²¹; soap containing spirit; snuff; spirits; spruce; tea; tobacco; varnish; watches, British manufacture; wine.²²

¹ *Warne v. Varley*, 6 T. R. 443; *Grindley v. Baker*, 1 B. & P. 229.

² 39 & 40 Vict. c. 36, s. 202. [See *Lord Advocate v. Crookshanks*, 15 R. 995.]

³ *R. v. Barfoot*, 13 East, 506.

⁴ *Lockyer v. Offen*, 1 T. R. 252.

⁵ 58 & 54 Vict. c. 56, s. 1.

⁶ Sect. 2.

⁷ Sect. 4.

⁸ 57 & 58 Vict. c. 60, s. 76.

⁹ Sect. 271.

¹⁰ ss. 202, 206. As to emigrants, see s. 314.

¹¹ *Att.-Gen. v. Schiers*, 2 C. M. & R. 286; 1 Gale, 223; 5 Tyr. 1024.

¹² 39 & 40 Vict. c. 36, s. 138; 42 & 43 Vict. c. 21, s. 8.

¹³ 44 & 45 Vict. c. 12, s. 5.

¹⁴ See 40 & 41 Vict. c. 68, s. 1, as to destructive insects.

¹⁵ 49 & 50 Vict. c. 41, s. 2; and 52 & 53 Vict. c. 42, s. 2.

¹⁶ 46 & 47 Vict. c. 10, s. 8.

¹⁷ 33 & 34 Vict. c. 90, s. 21.

¹⁸ 45 & 46 Vict. c. 74, s. 14.

¹⁹ 60 & 61 Vict. c. 63.

²⁰ 50 & 51 Vict. c. 28, s. 16; and see *Stacey v. Chilworth Co.*, 24 Q. B. D. 90; 59 L. J. M. C. 13; 62 L. T. 73; 38 W. R. 204; and *Wood v. Burgess*, 24 Q. B. D. 162; 59 L. J. M. C. 11; 61 L. T. 583; 38 W. R. 331; and see 54 Vict. c. 15.

²¹ 26 & 27 Vict. c. 10, s. 3; and 28 & 29 Vict. c. 121, s. 65; 55 & 56 Vict. c. 60, s. 3; 61 & 62 Vict. c. 46.

²² 55 & 56 Vict. c. 16, s. 2. The amount of duty varies.

The offences consist of :—

Failing to export, import, or enter goods properly,¹ or to report cargo,² and smuggling.³

The unshipping of goods, though in some cases not unlawful, may become so by reason of any subsequent fraud ; but there must be a fraudulent removal to render the unshipment illegal.⁴ Contraband goods may be seized if found in a river before they are landed or offered for sale.⁵

Where masters refuse or neglect to give to officers declarations concerning aliens (other than seamen employed), and refuse to pay the penalty imposed, the ship may be detained.⁶

Proceedings for the recovery of penalties or for condemnation must be commenced within three years after the commission of the offence or seizure of the articles;⁷ but this does not apparently apply to indictments.⁸

A charge of 5s. a day may be made, and for removal of goods where that takes place, where a ship or goods importing remain more than fourteen days after arrival ; and the like charge may be made on ships brought in under legal process or by stress of weather, or for safety or derelict, when actually guarded.⁹

As to dues, none is to be charged in respect of deficiency in goods, unless there is reason to suppose they have been abstracted.¹⁰

The duties become a debt to the Crown immediately on the importation.¹¹ In cases of dispute as to dues, the amount demanded must be paid, and an action commenced against the Collector within three months to ascertain what amount is payable.¹²

Where harbour dues remain unpaid, a clearance to the vessel may be withheld until security be given for their payment,¹³ and in any case if the master refuse to state her nationality.¹⁴

Goods, in default of perfect entry, may be sold within one month after landing.¹⁵ If not entered within fourteen days, they may be sold within three months ;¹⁶ and those in warehouses, not cleared after five years, after one months' notice to the warehouse-keeper.

¹ 39 & 40 Vict. c. 36.

² *Ibid.*

³ *Ibid.*

⁴ *R. v. Candy*, Ex. 15, 5, 1843, M. S. Rep. See *Att.-Gen. v. Hurel*, 11 M. & W. 589.

⁵ *Smith v. Reynolds*, 2 Wils. 257 ; *Johnson v. Saunders*, 1 B. & P. 267 ; *Att.-Gen. v. Delous*, 6 Price, 283.

⁶ 6 & 7 Will. IV. c. 11, s. 2. No action will lie at the suit of an alien for being refused admission to the country : *Musgrove v. Toy* [1891], A. C. 272.

⁷ 39 & 40 Vict. c. 36, s. 257.

⁸ *R. v. Thompson*, 16 Q. B. 832 ; 20 L. J. M. C. 183 ; and see *Att.-Gen. v. Radloff*, 10 Ex. 84 ; 23 L. J. Ex. 240 ;

R. v. Akers, 6 Esp. 125, n. ; *Att.-Gen. v. Briant*, 15 M. & W. 169 ; 15 L. J. Ex. 265 ; and *Van Boven*, 9 Q. B. 669.

⁹ 39 & 40 Vict. c. 36, s. 75.

¹⁰ Sect. 99. As to light dues, 57 & 58 Vict. c. 60, s. 650.

¹¹ *Leaper v. Smith*, Bun. 79 ; *Anon.* Lam. 15 ; *Salter v. Magapert*, 1 Roll. R. 380 ; *Att.-Gen. v. Weeks*, Bun. 223. See *Att.-Gen. v. Ansted*, 12 M. & W. 520.

¹² Sect. 30.

¹³ 10 Vict. c. 27, s. 48.

¹⁴ 57 & 58 Vict. c. 60, s. 68 ; and as to steamships not properly fitted, see s. 271.

¹⁵ 39 & 40 Vict. c. 36, s. 61.

¹⁶ Sect. 73.

Overplus, after payment of duties, to go to owner if known. If goods not worth the duty, they may be destroyed. In that case the duty is to be paid by the proprietor of the warehouse.¹

As has been above-stated, persons generally may be arrested for offences against the Customs Acts. So also may persons making signals to smugglers,² and those found or discovered to have been on board vessels with contraband goods within three miles of the coast (except in the service of a foreign State),³ and persons receiving forfeited goods or offenders, or assaulting or obstructing officers, or attempting to do so.⁴ The arrest may be effected at any place within three years of the commission of the offence.⁵

Persons on board infected ships may be detained pending examination of the state of health of persons so on board.⁶

Officers may secure goods before landing, and, if necessary, they may be placed in the Queen's warehouse.⁷

They may in pursuit of a ship or boat liable to seizure or examination (after signal) fire into her if she do not bring to.⁸

Customs officers may exercise Excise powers when necessary.⁹

On a ship being stranded or in distress the receiver may take command of all persons present and issue directions for the preservation of the ship, persons on board and cargo. For these purposes he may summon assistance, require the master of a ship near to lend aid and demand the use of any wagon, cart, or horses near.¹⁰

He may cause persons plundering, creating obstruction or disorder to be apprehended, and force to be used for the suppression of such plundering, disorder or obstruction.¹¹

In such cases the receiver and his assistants may, unless there is a public road equally convenient, enter and pass over adjoining lands and deposit cargo, etc., thereon. Any damage is recoverable as salvage.¹² And in the absence of the receiver, or principal officer of customs or coastguard, officers of inland revenue, sheriff, justice, or commissioned officers, may act in that capacity.¹³

Whenever any salvage is due under this Act the receiver shall, if due for services rendered to save ship, persons or cargo, detain the ship and cargo until payment or process of detention issues from competent Court; if due for saving of wreck, detain wreck in like manner. But no security being given he may release the same.¹⁴ If parties liable to pay are aware of it, he may, if amount not disputed and payment not made in twenty days after becoming due, sell the

¹ Sects. 98, 94.

² Sect. 190.

³ Sect. 179.

⁴ 44 & 45 Vict. c. 12, s. 12.

⁵ 39 & 40 Vict. c. 36, s. 199.

⁶ Sect. 234.

⁷ Sects. 47, 51, 61, 73 and 74. See *Att.-Gen. v. Voudière*, 1 C. M. & R. 571; 5 Tyr. 211; *Love v. Att.-Gen.* 2 C. M. & R. 544; 5 Tyr. 133; 1 Gale, 249.

⁸ Sect. 181.

⁹ 7 & 8 Geo. IV. c. 53, s. 38. See 24 & 25 Vict. c. 91, s. 22.

¹⁰ 57 & 58 Vict. c. 60, s. 511. He cannot interfere between master and crew unless requested by the master to do so.

¹¹ Sect. 512.

¹² Sect. 514.

¹³ Sect. 513.

¹⁴ Sect. 516.

same or a sufficient part thereof, and out of the proceeds pay the expenses and salvage and the surplus, if any, to the owners. In other cases there must be a judgment of a competent tribunal before sale.¹

A detaining officer is to have the same powers as an inspector of the Board of Trade.² For the purposes of survey, he may go on board the ship and inspect the same, and every part thereof, and the machinery, equipments, and cargo, and may require the unloading or removal of any cargo, ballast, and tackle.³

And any officer of the Board may seize and detain any ship liable to detention under the Foreign Enlistment Act.⁴

The powers of the Queen's harbour-master may be here added. If the master of any vessel within a dockyard port does not moor, anchor, place, unmoor, or remove the same according to directions given by this officer in conformity with an Order in Council, or if there is no person on board to attend to such directions, he may cause the vessel to be moored, etc., in conformity with such Order, and for that purpose may cast off, loose, or unshackle, and if need be sever any chain or rope of the vessel, first putting on board a sufficient number of persons for the protection of the vessel in case there is not a sufficient number thereon and all expenses attending the exercise of such powers shall be paid by the master.⁵

This officer or any person authorised in writing by the Admiralty may with proper assistance enter into any vessel in such port and there search for gunpowder, shotted or loaded guns, fire or light, or combustible substances had or suspected to be had on board in contravention of any Order in Council, and may extinguish any such fire or light.⁶

He may remove any wreck or other thing being an obstruction to such port, or the approaches thereto, and any floating timber that impedes the navigation thereof.⁷ And cause every vessel laid by or neglected or unfit for sea-service to be removed from a part of the port specified in an Order in Council and to be laid on some part of the strand or sea-shore or in some other place where the same may without injury to any person be placed.⁸

He may, in case of non-payment on demand of the expenses of any such removal of wreck, timber, or vessel by the owner thereof, sell the same, and out of the proceeds pay those expenses and the expenses of the sale, rendering the surplus, if any, to the owner on demand. Any deficiency may be recovered from the owner.⁹

Customs, commissioned and consular officers may if a vessel is British or engaged in the slave trade in British jurisdiction, or if foreign under treaty, seize and detain such vessel and persons

¹ Sects. 522, 523. See *The Fulham*, 1898, P. 206.

² s. 459.

³ As to foreign ships overloading, see s. 462.

⁴ 33 & 34 Vict. c. 90, s. 21.

⁵ 28 & 29 Vict. c. 125, s. 11.

⁶ s. 12.

⁷ s. 13.

⁸ s. 14.

⁹ s. 15.

found thereon reasonably suspected¹ of detention as slaves and carry away such vessel, etc., for the purpose of bringing them in for adjudication.² These powers are extended to British vessels reasonably suspected of being or having been employed or fitted out for the commission of similar offences against Pacific Islanders.³ And other officers may here be required to assist and force may be used.⁴

These powers are not confined to acts done in England and the colonies.⁵

Certain customs officers are employed to put in force the Acts relating to sea fisheries and the North Sea convention.⁶

In such case, in exercise of their powers, they may with respect to any sea fishing boat within the exclusive limits of the British Isles, and with respect to any British sea-fishing boat outside those limits—(1) board the boat; (2) require the owner, etc., to produce certificates; (3) number the crew; (4) require explanations as to certificates from master; (5) examine sails, lights, small boats, anchors, grapnels, and fishing implements; (6) seize any instrument serving only or intended to damage or destroy fishing implements by cutting or otherwise found on board or in possession of any person belonging to her; (7) hold an examination; (8) and in case of any contravention, take the offender and the boat and the crew to the nearest or most convenient port, and there detain them until adjudication.⁷

Where seal-fishing in Behring Sea has been prohibited by Order in Council, any full-pay naval officer may stop and examine any British ship in such sea and detain her, or any portion of her equipment, or any of her crew, if, in his judgment, the ship is being or is preparing to be used contrary to the Act.⁸

EXCISE.

The powers of excise officers are as follows :—

They may demand the production of a gun licence from any person using or carrying a gun (other than those in the service of Her Majesty), and if such licence is not produced they may demand a person's name and address.⁹

They and their assistants may at any time by night or day

¹ *R. v. Casaca*, 5 A. C. 548; 43 L. T. 490.

² 36 & 37 Vict. c. 88, s. 3.

³ 35 & 36 Vict. c. 19, s. 1.

⁴ s. 17.

⁵ *R. v. Zulusta*, 1 C. & K. 215; see *Madrazo v. Willes*, 3 B. & Ald. 353.

⁶ Close time for bream is March to June; sea-trout, September to January; oysters, May to July, and lamprey, March, inclusive.

⁷ 46 & 47 Vict. c. 22, s. 12. The convention forms the 1st schedule to

the Act. These powers are extended to liquor traffic, except that sub-sec. 8 *supra* is not to apply to other than sea-fishing boats or vessels habitually employed in dealing with fishermen unless necessary to suppress grave disorder—56 & 57 Vict. c. 17, s. 6. [As to S. see 58 & 59 Vict. c. 42, ss. 19, 21; and as to herring, 48 Geo. III. c. 110; 55 *ib.* c. 94, and 23 & 24 Vict. c. 92.]

⁸ 58 & 59 Vict. c. 21, s. 3.

⁹ 33 & 34 Vict. c. 57, s. 9; and see *post*, p. 61.

(but if between 11 P.M. and 5 A.M. in the presence of a constable) enter into and remain so long as they think fit, for the purpose of ascertaining, whether any offence has been committed, in any building or place belonging to or used by persons to carry on a trade subject to the excise laws, or by persons required by the same laws to make entry of such building.¹ They may enter at any time of the day or night the entered premises of a brewer for sale,² and if they find any concealed pipe may enter any adjoining house into which such pipe leads.³ They may also enter at any time the premises of a distiller or rectifier,⁴ and at all reasonable times the premises of a brewer other than a brewer for sale.⁵

Where they see a person using or carrying a gun, they may enter and remain as long as necessary on any lands or premises (other than a dwelling-house or the curtilage thereof) for the purpose of making the demand specified above.⁶

They may in the daytime enter and inspect the premises of methylators, or retailers of methylated spirits, or of persons authorised to receive such spirits,⁷ and they may at any time enter the premises of a spirit dealer or retailer.⁸

They may also at any time (but between 10 P.M. and 6 A.M. with the assistance of a constable) enter any workhouse or shop of a manufacturer, dealer or retailer of tobacco or snuff and inspect and examine all tobacco and snuff therein.⁹

And during the hours in which any house licensed for the retail of wine to be consumed on the premises is kept open, may enter every house, cellar, room or place entered for storing, keeping or retailing wine.¹⁰

As regards places subject to the laws of excise they may inspect the same and take account of all matters, things, works, vessels, utensils, goods and materials appertaining to such trade;¹¹ and also of the brewing materials, vessels, and utensils used by brewers.¹²

In a distillery, they may test the quantity of spirits at proof in any wash by distillation, and require any charger or receiver to be emptied and cleansed and any quantity of the wash to be distilled, and the produce to be conveyed into the charger or receiver. The distiller must provide assistance and fuel;¹³ and the officer may examine, gauge, and take account of any still or other vessel or utensil, and the spirits or materials for their manufacture,¹⁴ and

¹ 7 & 8 Geo. IV. c. 53, s. 22. See *Hill v. Barnes*, 2 W. Bla. 1135.

² 43 & 44 Vict. c. 20, s. 29. Beer includes cider and perry.

³ Sect. 30.

⁴ 43 & 44 Vict. c. 24, s. 137.

⁵ *Ibid.* c. 20, s. 35.

⁶ 33 & 34 Vict. c. 57, s. 10.

⁷ 43 & 44 Vict. c. 24, s. 127. By 53 & 54 Vict. c. 8, s. 31, the duty on methylated spirits is abolished, but the

manufacture is still subject to the Excise laws.

⁸ Sect. 141.

⁹ 3 & 4 Vict. c. 18, s. 3; and see 30 & 31 Vict. c. 90, s. 10.

¹⁰ 23 & 24 Vict. c. 27, s. 24. I. 23 & 24 Vict. c. 107, s. 25.

¹¹ 7 & 8 Geo. IV. c. 53, s. 22.

¹² 43 & 44 Vict. c. 20, ss. 29, 35.

¹³ *Ibid.* c. 24, s. 40.

¹⁴ Sect. 137.

where a concealed pipe is discovered, examine whether it conveys liquor so as to prevent a true account being taken.¹

A methylator's stock can only be examined in the daytime,² but that of a spirit retailer at any time,³ or of a tobacco manufacturer, dealer, or retailer,⁴ but that of a wine retailer can only be examined while the house is open for the sale of liquor.⁵

Spirits in transit may be examined.⁶

As to samples, the officer may take such as he deems necessary of any worts, or beer, or materials for brewing, in possession of a brewer for sale, who may first stir up and mix together such worts, beer or materials.⁷ In the case of margarine in transit, he may take samples to ascertain whether the provisions of the Act have been complied with.⁸ And also of any wort, wash, low wines, feints or spirits from any vessel or utensil in a distillery,⁹ or of any methylated spirits.¹⁰ And generally he may take any samples if he pay for them at the current price.¹¹

If there is reason to suspect the existence of concealed pipes, a brewer's premises may be searched.¹² And so may a distiller's¹³ or a wine retailer's.¹⁴ In the case of either a brewer or distiller if they are refused admittance they may (but at night only in the presence of a peace officer) break in;¹⁵ and if there be reason to suspect concealed pipes, may break up the ground of that or adjoining premises. In the case of a distillery, if the search be unsuccessful the damage is to be made good.¹⁶

Where a power to seize is conferred by statute it must be exercised strictly, and if the seizure extend to goods to which the power does not apply, although in the judgment of the officer it did apply, it is no justification.¹⁷ These officers, or any person acting in their aid, may seize any goods, commodities, and chattels, and any carts, horses, carriages, or other conveyances for carrying the same, forfeited by any act relating to excise.¹⁸ And mere possession seems sufficient without the intention to employ them illegally.¹⁹ And stills, vessels, utensils, spirits or materials for their manufacture, liable to forfeiture, may be seized,²⁰ or spirits found on premises of a wine retailer.²¹

Goods liable to duty are: beer, cards, chicory, cider, coffee, patent medicines, perry, snuff, spirits, sweets, tobacco, and wine.²²

¹ Sect. 139.

² Sect. 127.

³ Sect. 141.

⁴ 3 & 4 Vict. c. 18, s. 3.

⁵ 23 & 24 Vict. c. 27, s. 24.

⁶ 43 & 44 Vict. c. 24, s. 145.

⁷ Cap. 20, s. 26.

⁸ 50 & 51 Vict. c. 29, s. 8.

⁹ 43 & 44 Vict. c. 24, s. 42.

¹⁰ Sects. 127, 141.

¹¹ 51 Vict. c. 8, s. 6.

¹² 43 & 44 Vict. c. 20, s. 80.

¹³ Cap. 24, s. 137.

¹⁴ 23 & 24 Vict. c. 27, s. 24.

¹⁵ 43 & 44 Vict. c. 20, ss. 29, 30; c. 24, ss. 137, 139. [*Stewart*, 2 *Irv.* 416.]

¹⁶ *Ibid.* s. 139.

¹⁷ *Warne v. Varley*, 6 T. R. 443; *Grindley v. Baker*, 1 B. & P. 229.

¹⁸ 53 & 54 Vict. c. 21, ss. 30, 31. I. 1 & 2 Will. IV. c. 55, s. 26.

¹⁹ *Att.-Gen. v. Lockwood*, 9 M. & W. 378.

²⁰ 43 & 44 Vict. c. 24, s. 140.

²¹ 23 & 24 Vict. c. 27, s. 24.

²² The amount of duty varies.

Persons discovered in unentered excise factories may be arrested and detained;¹ and the officers here may do all that is necessary for the purpose of having the matter adjudicated on.² So also may a person carrying a gun who shall refuse his name and address.³

Persons may also be arrested for:—

The unlawful removal of malt, wort or wash,⁴ or spirits.⁵

Hawking and sale of spirits,⁶ or generally without licence,⁷ or of tobacco.⁸

And persons liable to arrest may be arrested subsequently after escape at any time.⁹

The offences not previously mentioned are:—

Fraudulently removing goods liable to duty.¹⁰

Making out false accounts and obstructing officers.¹¹

Proceedings for the recovery of penalties must be commenced within two years.¹²

Brewers and distillers must supply officers with ladders and lights to enable them to make their examination,¹³ and distillers may be required to draw off worm-tub.¹⁴

Manufacturers of tobacco must show permits when demanded¹⁵; and so must persons removing spirits in quantities of more than one gallon.¹⁶

Excise officers are authorised to use all the powers of customs officers when necessary.¹⁷

If persons armed with offensive weapons resist officers, they may be opposed by force.¹⁸ A hatchet caught up accidentally,¹⁹ or a horsewhip, or a stick,²⁰ or a smuggler's pole²¹ is not an offensive weapon within this section; but anything not in common use for any other purpose than a weapon is.²²

TAXES.

The power of a collector of taxes in case of non-payment of the sum charged by virtue of the Land Tax Acts or the Tax Acts is to

¹ 7 & 8 Geo. IV. c. 53, s. 33. In S. and I. the stills used illegally may be destroyed. See 3 Geo. IV. c. 52, ss. 114, 116, 118; 1 & 2 Will. IV. c. 55, ss. 1, 9, 18, 20, 25, 37; 31 & 32 Vict. c. 124, s. 6. These powers may be exercised in I. by constabulary, 17 & 18 Vict. c. 89, s. 6.

² *Evans v. McCloughlan*, 4 Macq. H. L. C. 89; 7 Jur. N. S. 1253.

³ 33 & 34 Vict. c. 57, s. 9.

⁴ 43 & 44 Vict. c. 24, s. 144.

⁵ Sect. 145.

⁶ Sect. 146. I. 20 & 21 Vict. c. 40, s. 5.

⁷ 51 & 52 Vict. c. 33, s. 6.

⁸ 5 & 6 Vict. c. 93, s. 13. Not to extend to dealers. See *Gray v. Commissioners of Customs*, 48 J. P. 343.

⁹ 4 & 5 Will. IV. c. 51, s. 25.

¹⁰ 7 & 8 Geo. IV. c. 53, s. 32.

¹¹ ss. 39, 44.

¹² 53 & 54 Vict. c. 21, s. 22.

¹³ 43 & 44 Vict. c. 20, s. 28; c. 24, s. 138.

¹⁴ Sect. 143.

¹⁵ 3 & 4 Vict. c. 18, s. 5.

¹⁶ 43 & 44 Vict. c. 24, s. 145; 3 Geo. IV. c. 52, s. 119; 1 & 2 Will. IV. c. 55, s. 25.

¹⁷ 7 & 8 Geo. IV. c. 53, s. 38.

¹⁸ Sect. 40.

¹⁹ *R. v. Rose*, 1 Leach, C. C. 342.

²⁰ *R. v. Fletcher*, *id.* 23.

²¹ *R. v. Noakes*, 5 C. & P. 326.

²² *R. v. Cosans*, 1 Leach, C. C. 342.

distrain upon the messuages, lands, tenements, and premises charged with such sum of money, or the person so charged by his goods and chattels, and all such other goods and chattels as the collector is thereby authorised to distrain, without any further authority than the warrant delivered on his appointment.¹

As to the amount that may be charged for such distress where the tax is under £20, see 57 Geo. III. c. 93, s. 1, and 7 & 8 Geo. IV. c. 17.²

The collector has priority over ordinary judgment debtors, and over the landlord for rent due.³ Where bankruptcy or liquidation supervene, however, the power of distraint vanishes.⁴ The collector's claim must here be proved in the ordinary way, but is entitled to preferential payment.⁵

To authorise a levy a demand of the specific sum must have been made and payment refused.⁶

Constables cannot be introduced unless there be reasonable ground to suppose that an assault will be committed or resistance to the distress made.⁷

Goods of a third person found on the premises are apparently seizable.⁸

A reasonable time must elapse between the demand and distraint in order to permit of complying with such demand or the distraint will be unlawful.⁹ So also will it be if it is made for a sum which is not actually due.¹⁰ As for land-tax due for rent-charge in lieu of extraordinary tithe.¹¹

The duties of the collector on seizure will be found stated *ante*.¹²

These officers collect income and land-tax and house duty.

Proceedings for penalties must be commenced within two years.¹³

POST OFFICERS.

The power of these officers is principally as to detention and opening of letters. This may be done in the case of a letter returned for want of true direction, or if the person to whom it is directed be dead, or cannot be found, or shall have refused the same,¹⁴ or if it be

¹ 43 & 44 Vict. c. 19, s. 86; and see *R. v. Ford*, 4 N. & M. 451; 2 A. & E. 588; 1 H. & W. 46. E. 588; 1 H. & W. 46; 42 & 43 Vict. c. 21, s. 25.

² *Post*, p. 186.

³ 43 & 44 Vict. c. 19, s. 88.

⁴ *The Regent Stores*, 38 L. T. 130; 42 J. P. 279.

⁵ 51 & 52 Vict. c. 62; 1. 35 & 36 Vict. c. 48, s. 59. *Re Henley Co.*, 48 L. J. Ch. 147; 89 L. T. 53; 26 W. R. 885.

⁶ *R. v. Ford*, 4 N. & M. 451; 2 A. &

⁷ *R. v. Clarke*, 4 N. & M. 671; 3 A. & E. 287; 1 H. & W. 252.

⁸ *Jason v. Dixon*, 1 M. & G. 601.

⁹ *Gibbs v. Stead*, 8 B. & C. 528.

¹⁰ *Charlton v. Alway*, 11 A. & E. 998.

¹¹ *Carr v. Fowle*, 1893, 1 Q. B. 251.

¹² Page 30.

¹³ [*Lord Advocate v. Sawers*, 25 R. 242.]

¹⁴ 7 Will. IV. c. 36, s. 25.

suspected to contain contraband goods,¹ or is sent contrary to regulations.² A post-master is unable to charge for delivery of letters, any more than the established rates.³

Officers may, after request and refusal to leave, remove persons wilfully obstructing business in a post office.⁴

¹ 3 & 4 Vict. c. 96, s. 65.

² 10 & 11 Vict. c. 85, s. 10. As to the interception of letters, see *R. v. James*, 24 Q. B. D. 439; 17 Cox, 24.

³ *Smith v. Powditch*, Cowp. 182.

These rates are fixed by Treasury warrant, 38 & 39 Vict. c. 22, s. 1.

⁴ 47 & 48 Vict. c. 76, s. 9. As to telegraphs, see 41 & 42 Vict. c. 76.

PART II.

THE LOCAL JURISDICTIONS.

I. ENGLAND.

1. WARRANTS AND ORDERS.

THE principal point for consideration in regard to the execution of these warrants and orders is as to the breaking of doors ; and the general rule is, that in such cases outer doors cannot be broken.

In *Semayne's* case it was resolved that (4) " In all cases where the door is open the [officer] may enter the house, and do execution about suit of any subject either on building or on goods. But it is not lawful on request made and denial, at the suit of a common person, to break the defendant's house so as to execute any process at the suit of any subject." ¹

If an officer attempt to force his way into a house in execution of civil process, and be resisted and killed, it is manslaughter only. ²

On the other hand, where a person conceals himself or deposits his goods in the house of a third party, in order to defeat the execution, the doors of such house may be broken.

In the same principal case it is laid down that (5) The house of any one is not a castle or privilege, but for himself, and shall not extend to protect any person who flies to his house, or the goods of any other person which are brought or conveyed into his house, to prevent a lawful execution and to escape the ordinary process of law ; and therefore in such case, after denial on request made, the [officer] may break the house. But he does this at his peril ; for, if it turn out that the defendant was not in the house, or had no property there, he is a trespasser. ³

These rules extend to dwellings only and buildings within the curtilage and not to outhouses. ⁴

If he be forcibly ejected after lawful entry, he may break open to re-enter. ⁵

Having obtained admission, he may break inner doors, although

¹ 5 Coke, 91.

² 1 East, P. C. 321.

³ *Johnson v. Leigh*, 1 Marsh. 565 ;
6 Taunt. 246.

⁴ *Penton v. Browne*, 1 Sid. 141.

Hodder v. Williams, 1895, 2 Q. B. 633 ;
73 L. T. 394.

⁵ *Eagleton v. Guttridge*, 11 M. & W.
465.

defendant be not therein at the time;¹ but he must first demand admittance,² and cupboards, trunks, etc., may be broken.³

If by lifting the latch of the outer door or opening in the ordinary way, he enters, he is justified if he had reasonable ground⁴ to believe that the execution-debtor or his goods were there.⁵ The lifting of such a latch or drawing back a sliding bar in the ordinary way, is not a breaking.⁶

The house where the execution-debtor resides—that is, where he sleeps—may be considered to be his own house, although he is not the proprietor thereof.⁷ The entry is not illegal by reason only of being obtained by fraud or deceit.⁸ If a hole in the outer wall be intended for a window or door, the officer is justified in entering, otherwise not.⁹ If a window be shut, but not fastened, it may not be opened.¹⁰

The officer being lawfully inside, may break the outer door in order to carry away the goods seized;¹¹ and it has been held that, where a sheriff breaks a house to seize goods, the execution is valid, although he is a trespasser.¹²

If the original entry is unlawful, so is the continuance there, and the officer cannot avail himself of such entry to execute a warrant of arrest.¹³ An arrest effected by the illegal breaking of a door is altogether void, and renders the officer liable to action not only for the breaking, but also for the assault and false imprisonment.¹⁴

Continuing on premises more than a reasonable time, or beyond that allowed by law, is good ground for an action of trespass,¹⁵ and the officer cannot plead justification in such case.¹⁶ As to the sheriff, if he continue in possession after the return day of the writ he becomes a trespasser *ab initio*,¹⁷ but this will not subject him to the allegation of a new trespass after the acts which he justifies under the execution.¹⁸

It appears that execution should in these cases take place only in the daytime, that is exclusive of night and twilight.¹⁹ *Mackallay's* case²⁰ is usually cited in support of the contrary view, but that case is not quite unexceptionable; it is limited to arrest on mesne process

¹ *Lee v. Gansel*, Gow 1; Lofft. p. 374.

² *Ratcliffe v. Burton*, 3 B. & P. 223.

³ *Lee v. Gansel*, *ubi supra*.

⁴ See the cases, *ante*, p. 39.

⁵ *Morrish v. Murray*, 13 M. & W. 57.

⁶ *Ryan v. Shilcock*, 7 Ex. 77; 21 L. J. Ex. 58.

⁷ *Sheers v. Brooks*, 2 H. Bl. 122.

⁸ *R. v. Backhouse*, Lofft. 61.

⁹ *Whaley v. Williamson*, 7 C. & P. 294.

¹⁰ *Nash v. Lucas*, L. R. 2 Q. B. 590.

¹¹ *Pugh v. Griffith*, 3 N. & P. 187.

¹² *Percival v. Stamp*, 9 Ex. 167.

¹³ *Hooper v. Lane*, 6 H. L. C. 535; 27 L. J. Q. B. 75; *Humphreys v. Stillwell*, 2 Bing. N. C. 619; 5 Sc. 51.

¹⁴ *Kerby v. Denby*, 1 M. & W. 336; 2 Gale, 31.

¹⁵ *Ash v. Dawmay*, 8 Ex. 237; 22 L. J. Ex. 59.

¹⁶ *Playfair v. Musgrove*, 14 M. & W. 239; 3 D. & L. 72; 15 L. J. Ex. 26.

¹⁷ See *post*, p. 150.

¹⁸ *Aitkenhead v. Blades*, 5 Taunt. 198; 1 Marsh. 17.

¹⁹ Cf. law in S. and I. *post*. In I. no writ of possession can be executed on Christmas-day or Good Friday, nor within two hours before sunset and sunrise or 6 A.M., whichever shall be latest [11 & 12 Vict. c. 47, s. 1].

²⁰ 9 Rep. 65.

(which is obsolete) and was decided at a peculiar epoch in our law.¹ Execution on a Sunday is not permissible,² except in the case of a subsequent arrest after an escape.³

Where privilege exists it may be claimed. But this does not concern the officer,⁴ except in the case of ambassadors and their servants, and clergymen attending divine service, the arrest of whom is a misdemeanour.⁵

1. OF SUPERIOR COURTS AT COMMON LAW.

THE SHERIFF.

By 50 & 51 Vict. c. 55, s. 8 (2), the sheriff is required to execute writs, and "if he shall find any resistance in such execution he shall take with him the power of the county, and shall go in proper person⁶ to do execution, and may arrest the resisters and commit them to prison".

On account of this power a return of rescue is bad.⁷

Every sheriff shall at the expiration of his term of office make out and deliver to the incoming sheriff a correct list and account under his hand . . . of all rolls and writs in his hand not wholly executed by him.⁸

The incoming sheriff shall thereupon sign and give to the outgoing sheriff a duplicate of such account which shall be a good and sufficient discharge to him.⁹

A sheriff shall not be called upon to return to any writ after the expiration of six months from the time he held office.¹⁰ No order to return is now to issue, but a notice is to have the same effect.¹¹ He must, if required, give a receipt for the writ.¹²

Assistance.—This writ is used where there has been a decree or order directing chattel property to be given up.¹³ The duty of the sheriff is to put the plaintiff in possession of such property. A previous demand is not necessary.¹⁴

For the fee, see *post*.¹⁵

¹ See *American Co. v. Hendry*, 5 R. 331.

² 29 Car. II. c. 7, s. 6. See *Taylor v. Phillips*, 3 East, 1855; *R. v. Myers*, 1 T. R. 266.

³ *Parkes v. Moore*, 2 Salk. 226.

⁴ *Tarlton v. Fisher*, 2 Doug. 671; *Magnay v. Burt*, 5 Q. B. 381; *Ames v. Waterlow*, L. R. 5 C. P. 53. *Re Armstrong*, 1892, 1 Q. B. 327; 65 L. T. 464.

⁵ *Ante*, p. 7; 24 & 25 Vict. c. 100, s. 36.

⁶ This includes the under-sheriff, *Dalt.* 104. The duties of the *posse com.* in these cases are of a passive nature—*Miller v. Knox*, 6 Sc. 1.

⁷ *Wat.* p. 97. Rescue is apparently indictable, see *ante*, p. 25, and [*R. v. Walshe*, 10 C. L. Ir. 511].

⁸ Sect. 28 (1). [I. 5 & 6 Will. IV. c. 55, s. 6.] This does not apply after seizure and sale; *Harrison v. Paynter*, 6 M. & W. 387.

⁹ Sect. 28 (2).

¹⁰ *Ibid.* (3); *R. v. Jones*, 2 T. R. 1.

¹¹ Order 52, r. 11 [no corresponding rule in I.]; and see *Hall v. Ley*, 12 C. D. 795, and *Wells v. Pickman*, 4 R. R. 410. In the case of a special bailiff, as to which see *post*, p. 155, he cannot be ordered to return: *De Moranda v. Dunkin*, 4 T. R. 119.

¹² Sect. 10 (1).

¹³ *Wyman v. Knight*, 39 Ch. D. 165; 57 L. J. Ch. 886; 59 L. T. 164; *Caset v. Othon*, 23 W. R. 110.

¹⁴ Cons. Ord. xxix. 1.

¹⁵ Page 181.

Attachment.—This writ is employed in cases of contempt where the order is by way of process and not punishment,¹ for instance, where a man does not obey an order of the court made in some civil proceeding to do or abstain from doing something—as where an injunction is granted in an action against a defendant and he does not perform what he is ordered to perform.²

Delivery.—This writ issues for the recovery of specific chattel property. If the same cannot be found the sheriff is to distrain the defendant by all his lands and chattels, and the writ is then executed in the same manner as that of *distringas*.³

For the sheriff's fee see *post*.⁴

Elegit.—This writ is employed in the execution of process against the lands of the judgment debtor.⁵

In order to ascertain the lands, the sheriff must hold an inquisition.⁶ There is no actual delivery in execution, but on the finding of the inquisition the sheriff returns to the writ.⁷ The sheriff is to “make and deliver execution unto the party in that behalf suing of all such lands, tenements, rectories, tithes,⁸ rents and hereditaments including lands and hereditaments of copyhold or customary tenure as the person against whom execution is so sued, or any person in trust for him shall have been seized or possessed of at the time of entering up the said judgment or at any time afterwards or over which such person shall at the time of entering up such judgment, or at any time afterwards have any disposing power which he might without the assent of any other person exercise for his own benefit”.⁹ This includes a mansion-house excepted from the leasing power of a tenant for life. Estates granted by the Crown for the maintenance of dignities with reversion to the Crown,¹⁰ land held by a public body for a public purpose,¹¹ other than that held not for the district generally, but for a contributory place in which case it can only be taken in execution for judgment debts of such place,¹² and a wife's land vested in the husband during the coverture.¹³ Where lands are taken under this writ there is no interest in them seizable under a subsequent writ.¹⁴

As to what may not be taken this includes estates vested in

¹ *Re Armstrong*, 1892, 1 Q. B. 327; *Re B.* 1892, 1 Ch. 459; Order xlv., and see *Attachment*, *ante*, p. 8.

² *Per Cotton*, L. J., *O'Shea v. O'Shea*, 15 P. D. 59.

³ See *post*, p. 78.

⁴ Page 181.

⁵ 46 & 47 Vict. c. 52, s. 146; Order xliii. [I. 12 & 13 Vict. c. 95, s. 3. By 13 & 14 Vict. c. 29, s. 1, lands are not to be seized under this writ but by writ of possession.]

⁶ Co. Litt. 289 b.

⁷ *Barnes v. Harding*, 1 C. B. N. S. 568.

⁸ As to ecclesiastical execution, see *post*, p. 68.

⁹ 1 & 2 Vict. c. 110, s. 11; and see 29 Car. 2, c. 3, s. 10.

¹⁰ *Davis v. Marlborough*, 2 Swan. 122.

¹¹ *Worral Co. v. Lloyd*, L. R. 1 C. P. 719.

¹² *Jersey v. Uxbridge*, 55 J. P. 165; 7 T. L. R. 568.

¹³ *Dalt.* 136; and see *post*, p. 74.

¹⁴ *Carter v. Hughes*, 2 H. & N. 714.

purchasers or mortgagees,¹ an equity of redemption,² and as to trust estates it has been held that where land is vested in a long term of years in a trustee in trust to permit a person to receive the rents and profits until default in payment of a rent-charge, or until the person should insure the premises, and in case of such default to pay to a third person out of the rents and profits a certain rent-charge, this was not seizable under an *elegit* against the first *cestui que trust*.³ But a simple trust estate even for the life of the party is seizable.⁴ A benefice including the glebe of a parsonage, a vicarage, or an advowson in gross, or a churchyard cannot be taken,⁵ but a bishop's lands probably may be.⁶ Rent-arrears, a rent-seek or an office is exempt. For the execution creditor to be entitled to rent it must be due before the delivery of the writ to the sheriff.⁷ But a tenant need not attorn in order for the plaintiff to sue for rent subsequently accruing.⁸ A remainder or reversion is not seizable.⁹

The sheriff must make a return,¹⁰ where anything has been done under the writ.¹¹ But such return is not necessary to complete seizure under sect. 45 of the Bankruptcy Act, 1883.¹²

There is no sale under this writ.¹³

For the fees payable, see *post*.¹⁴ The poundage is £5 per cent. on the first £100, and £2½ per cent. afterwards,¹⁵ and this is confined to the yearly value.¹⁶

Fieri Facias.—This writ is employed in execution on the goods of the judgment debtor.

Where the sheriff returns that the defendant is a beneficed clerk and has no goods or chattels or any lay fee in his bailiwick, a like writ is directed to the bishop for execution.¹⁷

The creditor in this case must exhaust the temporal before recourse to the spiritual goods.¹⁸ The liability of the bishop is the same as that of the sheriff.¹⁹

Where more than one writ is in the sheriff's hands he must execute that which was first delivered to him,²⁰ unless fraudulent,

¹ 18 & 19 Vict. c. 15, s. 11.

² *Lyster v. Dolland*, 3 Br. C. C. 478; 1 Ves. 481; *Plunkett v. Pearson*, 2 Atk. 292.

³ *Hull v. Greenhill*, 4 B. & Ald. 684. As to friendly societies see *post*, p. 74.

⁴ *Scott v. Scholey*, 8 East, 485; *Hele v. Bexley*, 17 Beav. 14.

⁵ Wat. p. 309. *Parry v. Jones*, 1 C. B. N. S. 345.

⁶ Dalt. p. 136.

⁷ *Sharpe v. Key*, 8 M. & W. 379.

⁸ *Lloyd v. Davies*, 2 Ex. 108; 18 L. J. Ex. 80.

⁹ *In re Smith*, L. R. 9 Ch. 378.

¹⁰ See *ante*, p. 66.

¹¹ *Hoe*, 5 Rep. 90 a.

¹² *Re Hobson*, 2 Ti.R ep. 884. This

section denies to creditors the benefit of an execution unless it is completed before bankruptcy.

¹³ Co. Litt. 289 b.

¹⁴ Page 181.

¹⁵ 29 Eliz. c. 4.

¹⁶ *Nash v. Allen*, 1 Dav. & M. 16; *Tyson v. Parke*, 2 Ld. Ray. 1212; Salk. 338.

¹⁷ Order 43, r. 3. [Not applicable to I.]

¹⁸ *Bromage v. Vaughan*, 7 Ex. 293.

¹⁹ *Walwyn v. Auberry*, 2 Mod. 257; *Pickard v. Paiton*, 1 Sid. 276. In the event of a vacancy in the see, the writ goes to the archbishop.

²⁰ *Hutchinson v. Johnson*, 1 T. R.

729.

and in that case execute the other or others.¹ The fraction of a day is sufficient to give priority.² An execution levied by a special bailiff on a subsequent writ may be recovered by the sheriff as received to his use.³ But if he is directed not to execute the first writ until a future day, he may execute another delivered before that day.⁴ If after execution of the first there is a surplus, this must be applied to the second and so on.⁵ Where a writ is renewed it is entitled to priority from the time of the original delivery⁶; but while it is withdrawn he cannot enter without further instructions from the execution creditor, and may execute a subsequent writ without notice to such creditor.⁷

The writ must agree with the judgment in the mandatory part.⁸

If the debtor die after the writ has issued, execution may be levied on goods in the hands of the executor.⁹ The death of the execution creditor after the issue of the writ will not affect the execution.¹⁰

The duty of the sheriff is to seize only so much as will satisfy the writ together with poundage fees and expenses,¹¹ and interest where it is for the recovery of money at the rate of £4 per cent. from the judgment or more where agreed on.¹² The sheriff must on seizure leave a man in possession until the sale takes place,¹³ which must be within a reasonable time.¹⁴ A seizure of part in the name of the whole is good.¹⁵ The defendant instead of allowing the writ to be executed may pay the debt and costs;¹⁶ a tender before seizure is equivalent to payment.¹⁷

Where a judgment is against partners execution may issue against (a) any property of the partnership within the jurisdiction, (b) any person who has appeared or admitted to be or been adjudged a partner or (c) has been served as a partner with a writ and failed to appear.¹⁸ The sheriff can only sell such assets as are seizable, not book-debts or goodwill.¹⁹ No writ of execution against partnership property can now issue for a partner's separate debt.²⁰

¹ *Bailey v. Windham*, 1 Wils. 44; *Christopherson v. Burton*, 3 Ex. 160; 18 L. J. Ex. 60.

² *Smallcomb v. Buckingham*, Carth. 419; see *Clarke v. Bradlaugh*, 8 Q. B. D. 63.

³ *Sawle v. Paynter*, 1 D. & Ry. 307.

⁴ *Kempland v. Macaulay*, Peake N. P. C. 66; *Hunt v. Hooper*, 1 D. & L. 628. [*Kirwan v. Jennings*, 3 C. L. Ir. 48.]

⁵ *Aldred v. Constable*, 6 Q. B. 370.

⁶ Order 42, r. 20.

⁷ *Shaw v. Kirby*, 52 J. P. 182.

⁸ *Webber v. Hutchins*, 8 M. & W. 319.

⁹ *Ranken v. Harwood*, 10 Jur. 794; *Chick v. Smith*, 8 Dowl. 337; *Wright v. Mills*, 28 L. J. Ex. 223. See *Waghorne v. Longmead*, 4 R. R. 739.

¹⁰ *Thoroughgood*, Noy. 73.

¹¹ 15 & 16 Vict. c. 76, s. 123. [I. 6 Anne c. 7, s. 3; *Yates v. Meehan*, 11 C. L. Ir. 23; *Byrne v. Hutchinson*, 9 ib. 75.]

¹² Order 42, r. 16.

¹³ *Blades v. Arundale*, 1 M. & S. 711.

¹⁴ *Bales v. Wingfield*, 2 N. & M. 83.

¹⁵ *Gladstone v. Padwick*, L. R. 6 Ex. 203.

¹⁶ *Taylor v. Bekon*, 2 Lev. 203.

¹⁷ *Colls v. Coates*, 11 A. & E. 826; 3 P. & D. 511.

¹⁸ Order xlviii. A, r. 8. [I. O. 42, r. 10.] *Harris v. Beauchamp*, 1893, 2 Q. B. 534.

¹⁹ *Helmores v. Smith*, 36 W. R. 3; cf. *Perrens v. Johnson*, 3 Sm. & G. 419; 3 Jur. N. S. 975.

²⁰ 53 & 54 Vict. c. 39, s. 23.

Where an insufficient levy is made, there may be a further levy under the same writ, or a second writ may issue.¹

All goods and chattels, with certain exceptions, may be seized, provided they can be sold,² including corn, potatoes and other crops which yield an annual profit.³ But where growing crops had been seized and a writ of possession was subsequently delivered to the sheriff in ejectment at the suit of the landlord founded on a demise made long before the issue of the *fi. fa.* the sheriff was not bound to sell them as they could not be considered as belonging to the tenant.⁴ As to money it is laid down by 1 & 2 Vict. c. 110, s. 12, that the sheriff or his officer "may and shall seize and take any money,⁵ or bank notes (whether of the Bank of England or otherwise), and any cheques, bills of exchange, promissory notes, bonds, specialties or other securities for money,⁶ belonging to the person against whose effects such writ of *fi. fa.* shall be sued out, and may and shall pay or deliver to the party suing out such execution any money or bank notes which shall be so seized or a sufficient part thereof, and may and shall hold any such cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money as a security or securities for the amount by such writ of *fi. fa.*, directed to be levied and raised," and after providing for the manner of recovery, continues, "and may and shall pay over to the party suing out such writ the money so to be recovered, or such part thereof as shall be sufficient to discharge the amount by such writ directed to be levied, and if after satisfaction of the amount so to be levied together with sheriff's poundage and expenses any surplus shall remain in the hands of such sheriff or other officer, the same shall be paid to the party against whom such writ shall be so issued".

In the case of a ship, seizure before sale is apparently not necessary.⁷ Where Admiralty process exists there can *seem* be neither seizure nor sale.⁸

Chattel interests such as leases for years are seizable;⁹ but a tenant cannot be turned out of possession when he has taken a term, under an execution against the landlord,¹⁰ nor to give place to a purchaser.¹¹ As to fixtures, those which may be removed by the tenant during his term may be seized and sold in execution against

¹ *Jordan v. Binckse*, 18 L. J. Q. B. 277; *Gawler v. Chaplin*, 18 L. J. Ex. 42.

² *Francis v. Nash*, Ca. t. Hard. 53; *Legg v. Evans*, 6 M. & W. 41.

³ 2 Gilb. Ex. 19; *Wat.* p. 253.

⁴ *Hodgson v. Gascoigne*, 5 B. & Ad. 58.

⁵ This does not extend to a mere debt: *Wood v. Wood*, 4 Q. B. 397; *Harrison v. Paynter*, 6 Q. B. 387. [1. 3 & 4 Vict. c. 105, s. 20; 16 & 17 Vict. c. 113, s. 131.]

⁶ This does not include title-deeds, but a policy of insurance may be taken: *Law v. London Co.*, 1 K. & J. 223 [otherwise in *I. Alleyne v. Davey*, 5 Ir.

Ch. R. 55]—and pawnbroker's pledges: *Rollason v. Rollason*, 24 Ch. D. 495.

⁷ *Harley v. Harley*, 11 Ir. Ch. R. 451.

⁸ *Ladbroke v. Cricket*, 2 T. R. 649. See Order xlii. r. 29. [1. r. 31.]

⁹ Com. Dig. Execution. [*Doherty v. Nelson*, 1895, Q. B. 1. 90. In 1. no freehold or equitable interest can be taken—*Griffin v. Cadell*, 9 C. L. Ir. 488; *Rice v. McQuade*, *ib.* 101; *Tener v. Booth*, Ir. Cir. R. 625; *O'Riordan v. Kelly*, 16 L. R. 1. 263.]

¹⁰ *Taylor v. Cole*, 8 D. & E. 292.

¹¹ *R. v. Deane*, 2 Show. 85; see *Burden v. Kennedy*, 3 Atk. 739.

him, but not as against the freeholder who is also the occupier,¹ and these include arras hangings,² barn on blocks,³ beds fastened to ceiling,⁴ bins,⁵ blinds,⁶ book cases,⁷ buildings on blocks, rollers, pillars, etc.,⁸ cabinets,⁹ chimney backs,¹⁰ glasses,¹¹ and pieces,¹² cider mills,¹³ cisterns,¹⁴ clock cases,¹⁵ coffee mills,¹⁶ colliery machines,¹⁷ cooling coppers,¹⁸ counters,¹⁹ coppers,²⁰ cranes,²¹ cupboards,²² desks and drawers,²³ dutch barns,²⁴ engines, fire engines,²⁵ furnaces,²⁶ furniture, fixtures put up as,²⁷ gas pipes, glass fronts,²⁸ grates,²⁹ hangings,³⁰ iron chests,³¹ and malt mills,³² ovens,³³ safes,³⁴ jacks,³⁵ lamps,³⁶ looking-glasses,³⁷ machinery let into cups or sets of timber,³⁸ or capable of removal without damage to building,³⁹ mash-tubs,⁴⁰ mills and posts or erections on brick foundations,⁴¹ partitions,⁴² pattens, erection on,⁴³ pier-glasses, pictures,⁴⁴ plant and pipes of brewers, distillers, etc.,⁴⁵ presses,⁴⁶ pumps slightly attached,⁴⁷ rails laid down by lessee,⁴⁸ ranges,⁴⁹ reservoirs,⁵⁰ shelves, sinks, shrubs planted for sale,⁵¹ stoves,⁵² stuffed birds in cases,⁵³ tapestry,⁵⁴ tubs,⁵⁵ turret clocks,⁵⁶ vessels on brickwork,⁵⁷ varnish houses,⁵⁸ vats and utensils used for trade,⁵⁹ wainscot fixed by screws,⁶⁰ and window-sashes not beaded into frames.⁶¹

¹ *Wynne v. Ingleby*, 5 B. & A. 625; *Place v. Fagg*, 4 M. & Ry. 281. [I. see 23 & 24 Vict. c. 154, s. 17.]

² Sewell, p. 231.

³ *Callous v. Tuffnell*, Bull N. P. 3.

⁴ *Ex parte Quincey*, 1 Atk. 477.

⁵ Am. & Fer. (*Pictures*), 3rd ed.

⁶ *Colegrave v. Dias Santos*, 1 B. & C. 77.

⁷ Am. & Fer. 325.

⁸ *Elwes v. Mawe*, 3 East, 38; 2 S. L. C. 182.

⁹ *Birch v. Dawson*, *inf.*

¹⁰ *Harvey v. Harvey*, 2 Str. 117.

¹¹ *Beak v. Rebors*, 1 P. Wms. 94.

¹² *Leach v. Thomas*, 7 C. & P. 328.

¹³ *Lawton v. Lawton*, 3 Atk. 12.

¹⁴ Am. & Fer. 4.

¹⁵ 4 Burn. Ecc. Law, 7th ed. 301.

¹⁶ *R. v. Londonthorpe*, 6 T. R. 379.

¹⁷ See note (¹³).

¹⁸ See note (⁶).

¹⁹ See note (⁶).

²⁰ *Poole*, 1 Salk. 368.

²¹ Am. & Fer. 12.

²² *R. v. St. Dunstan*, 4 B. & C. 686.

²³ See note (⁶).

²⁴ *Dian v. Allarley*, 3 Esp. 11.

²⁵ *Dudley v. Ward*, Amb. 113;

Whitehead v. Bennett, 27 L. J. Ch. 474.

²⁶ *Squier v. Meyer*, 2 Free. 249.

²⁷ *Birch v. Dawson*, 4 N. & M. 22; 2 Ad. & E. 37.

²⁸ Am. & Fer.

²⁹ *Lee v. Risdon*, 7 Taunt. 191.

³⁰ See note (¹⁰), *sup.*

³¹ See note (¹⁶), *sup.*

³² See note (¹⁵), *sup.*

³³ Am. & Fer. 395.

³⁴ See note (¹⁵), *sup.*

³⁵ Am. & Fer. 247.

³⁶ *Davis v. Jones*, 2 B. & Ald. 165.

³⁷ See note (²⁵), *sup.*

³⁸ *Colegrave v. Dias Santos*, 1 B. & C. 77.

³⁹ *Ward*, 4 Leon. 241.

⁴⁰ See note (²⁶), *sup.*

⁴¹ *Ward*, 4 Leon. 241.

⁴² *Poole*, *ubi sup.*

⁴³ *Naylor v. Collinge*, 1 Taunt. 19.

⁴⁴ *Beak v. Rebors*, *ubi sup.*

⁴⁵ *Lawton v. Lawton*, *ubi supra*.

⁴⁶ *Birch v. Dawson*, *sup.*

⁴⁷ *Grymes v. Bowerin*, 6 Bing. 437;

3 T. & I. 333.

⁴⁸ *Antrim v. Dobbs*, 30 L. R. Ir. 424.

⁴⁹ *Birch v. Dawson*, *sup.*

⁵⁰ See note (⁴⁷).

⁵¹ *Penton v. Roberts*, *inf.*

⁵² *R. v. St. Dunstan*, *ubi sup.*

⁵³ *Hill v. Bullock*, 77 L. T. 240; 1897, 2 Ch. 482.

⁵⁴ *Harvey v. Harvey*, *ubi sup.*

⁵⁵ *Colegrave v. Dias Santos*, *ubi sup.*

⁵⁶ Am. & Fer. 247.

⁵⁷ *Horn v. Baker*, 9 East, 215.

⁵⁸ *Penton v. Roberts*, 2 East, 88.

⁵⁹ *Whitehead v. Bennett*, *ubi sup.*

⁶⁰ See note (⁴⁵), *sup.*

⁶¹ *R. v. Hedges*, 1 Leach, C. C. 201; 2 East, P. C. 590.

Under the Agricultural Holdings Act, engines, machinery, fencing, etc., erected by the tenant on such a holding are *prima facie* his property, and therefore liable to be taken in execution against him,¹ provided that all rent is paid, the removal does not cause damage, and such damage is made good, and the landlord on a month's notice, elects not to purchase the same.

As to what may not be taken, it appears that actual necessities such as tools, bedding, etc., to the value of £5 are exempt.² and clothes in actual use,³ as also is straw threshed or unthreshed, or any straw of crops growing, or any chaff colder, or turnips, or manure, compost ashes or seaweed in any case whatever, or hay, grass or grasses, whether natural or artificial, nor any tares or vetches, nor any roots or vegetables being produce of such lands in any case where according to any covenant or written agreement entered into and made for the benefit of the owner or landlord of any farm, such hay, etc., ought not to be taken off or withholden from such lands, or which by the tenor or effect of such covenants or agreements ought to be used or expended thereon, and of which covenants or agreements such sheriff or other officer shall have received a written notice before he shall have proceeded to sale.⁴ Things which yield no annual profit, or which are produced without man's labour⁵—clover, rye or artificial grass growing under corn, and meadow grass or fruit growing—are exempt.⁶ So also are goods which do not actually belong to the defendant,⁷ or which have passed without fraud under a bill of sale.⁸ These must be registered to be valid within seven days of execution.⁹ And in these cases the sheriff is not bound to interplead, but is at liberty to withdraw, though the value of the goods seized exceed the sum secured by the bill of sale.¹⁰ As to what assignments are valid, with regard to the debtor himself and all persons claiming through him (other than purchasers) the goods are bound from the *teste* of the writ.¹¹ A grant of goods not in existence or not belonging to the debtor when he executed the deed is good if it purport to pass the property.¹² When taken possession of by the grantee¹³ it is not subject to an execution against the debtor.¹⁴ Purchasers are only bound from the time of delivery of

¹ 46 & 47 Vict. c. 61, s. 34. [I. see 33 & 34 Vict. c. 46, ss. 1, 2, 4.]

² 8 & 9 Vict. c. 127, s. 8. [I. 11 & 12 Vict. c. 28, s. 9.]

³ *Hardistey v. Barney*, Comb. 356.

⁴ 56 Geo. III. c. 50, ss. 1, 8. E.

⁵ 2 Gilb. Ex. 19.

⁶ Wat. 253.

⁷ *Glasspoole v. Young*, 9 B. & C. 696; *Dawson v. Wood*, 3 Taunt. 256; *Edwards v. Bridges*, 2 Stark, 396.

⁸ *Glasspoole v. Young*, *ubi supra*, and see *Richards v. Johnston*, 4 H. & N. 660; 1 F. & F. 447.

⁹ 45 & 46 Vict. c. 43, s. 8, and registered every five years, s. 11. It

cannot assign after-acquired property, s. 5—nor be for less than £30, s. 12. [I. 43 & 44 Vict. c. 50, ss. 8, 10.]

¹⁰ *Scarlett v. Hanson*, 12 Q. B. D. 213.

¹¹ *Houghton v. Bewley*, Skin. 257; *Esp. Williams*, L. R. 7 Ch. 317.

¹² *Lazarus v. Andrade*, 5 C. P. D. 318; *Clements v. Mathews*, 11 Q. B. D. 808.

¹³ *Reeve v. Whitmore*, 32 L. J. Ch. 63; *Carr v. Allatt*, 27 L. J. Ex. 385.

¹⁴ *Chidell v. Galsworthy*, 6 C. B. N. S. 471; *Brown v. Bateman*, L. R. 2 C. P. 272.

the writ to the sheriff and the officer must indorse thereon the exact time of receipt.¹ But if the assignment be made fraudulently to delay, hinder, and defraud creditors before such delivery it will be void.² Here the intent must be proved and the fact that creditors are delayed is not conclusive.³ Future creditors are within the Act if the intent to delay be clear.⁴ The fact that there was no valuable consideration or none at all is evidence of fraud.⁵ But a sale for good consideration is not void merely if made to defeat an expected execution.⁶ Nor a *bonâ fide* assignment for the benefit of creditors.⁷

Landlords' fixtures are also exempt. These are agricultural erections,⁸ alehouse bar,⁹ barns fixed,¹⁰ beast-house,¹¹ bench,¹² boilers built in,¹³ box border,¹⁴ carpenter's shop, cart-house,¹⁵ chimney-pieces,¹⁶ cornices affixed,¹⁷ conservatories,¹⁸ doors, dressers,¹⁹ fold-yard walls,²⁰ fruit trees and shrubs,²¹ fruit-houses,²² glasses in pannels fixed,²³ windows,²⁴ grates,²⁵ hearth,²⁶ keys and locks,²⁷ ladders fixed,²⁸ lime-kilns,²⁹ machinery, moveable part essential to fixture,³⁰ mill machinery or stones,³¹ ovens,³² partitions,³³ pillars on a dairy floor,³⁴ pineries fixed,³⁵ pump-house,³⁶ ranges and set-pots,³⁷ racks in stables,³⁸ salt-pans,³⁹ slabs of marble, statues, vases, part of design, fixed,⁴⁰ strawberry beds,⁴¹ tapestry fixed,⁴² wagon-house,⁴³ windmills.⁴⁴

The tenant may renounce his right to remove his fixtures, and, in that case, they could not be taken.⁴⁵ If he mortgage them, the mortgagee may enter and seize them⁴⁶ during the tenancy.⁴⁷

¹ 56 & 57 Vict. c. 71, s. 26; see *Hobson v. Thellusson*, L. R. 2 Q. B. 642.

² 13 Eliz. c. 5; *Twyne*, 3 Rep. 80.

³ *Exp. Mercer*, 17 Q. B. D. 290; *Godfrey v. Poole*, 18 A. C. 497.

⁴ *Spirrett v. Willows*, 3 D. F. & J. 293; *Ridler v. Ridler*, 22 Ch. D. 74.

⁵ *Gale v. Williamson*, 8 M. & W. 205.

⁶ *Wood v. Dixie*, 7 Q. B. 892; *Holbird v. Anderson*, 5 T. R. 235.

⁷ *Alton v. Harrison*, L. R. 4. Ch. 622; *Allen v. Bonnett*, L. R. 5 Ch. 577.

⁸ *Elwes v. Mawe*, *ubi sup.*

⁹ 2 Bl. 111.

¹⁰ See note (8).

¹¹ *Ibid.*

¹² Am. & Fer., 3rd ed.

¹³ *Jenkins v. Gethring*, 2 J. & H. 520.

¹⁴ *Empson v. Soden*, 1 N. & M. 720.

¹⁵ See note (8), *sup.*

¹⁶ *Poole*, 1 Salk. 368.

¹⁷ *Avery v. Cheslyn*, 5 N. & M. 372; 3 Ad. & E. 75.

¹⁸ *Buckland v. Butterfield*, 4 Moo. 440; 3 B. & B. 54.

¹⁹ 2 Bl. 111.

²⁰ See note (8), *sup.*

²¹ *Windham v. May*, 4 Taunt. 316.

²² See note (8), *sup.*

²³ *Allen v. Allen*, More, 112.

²⁴ 11 Co. Rep. 64.

²⁵ *Lee v. Risdon*, 7 Taunt. 191;

Richardson v. Ardley, 38 L. J. Ch. 306.

²⁶ See note (8), *sup.*

²⁷ *St. John v. Pigott*, 2 Bul. 103.

²⁸ *Wilde v. Waters*, 16 C. B. 637.

²⁹ *Thrasher v. E. London Waterworks*, 2 B. & C. 608.

³⁰ *Mather v. Frazer*, 25 L. J. Ch. 361; 2 K. & J. 596.

³¹ *Farrant v. Thompson*, 5 B. & Ad. 826.

³² *Wynne v. Ingleby*, 5 B. & Ald. 625.

³³ *Kinlyside v. Martin*, 2 Bl. 111.

³⁴ *Leach v. Thomas*, 7 C. & P. 328.

³⁵ See note (15), *sup.*

³⁶ *Elwes v. Mawe*, *ubi sup.*

³⁷ See note (32).

³⁸ 2 Vent. 114.

³⁹ *Lawton v. Salmon*, 1 H. Bl. 260.

⁴⁰ See note (23), *sup.*

⁴¹ *Wetherell v. Howell*, 1 Camp. 227.

⁴² *D'Eyncourt v. Gregory*, L. R. 3 Eq. 382.

⁴³ See note (36), *sup.*

⁴⁴ *Steward v. Lambe*, 4 Moo. 25; 1 B. & B. 506; *R. v. Otley*, 1 B. & Ad. 161.

⁴⁵ *Dumerque v. Ramsey*, 2 H. & C. 777.

⁴⁶ *London Co. v. Drake*, 6 C. B. N. S. 798.

⁴⁷ *Weston v. Woodcock*, 7 M. & W. 14; *Smith v. Reader*, 27 L. J. Ex. 85.

If money or property be in the hands of an officer of a friendly society by virtue of his office and be seized, it must be delivered up on the written demand of the trustees or other persons authorised to demand it by the society.¹

Goods deposited as a security for a debt are not seizable,² nor those which are held by way of lien.³ Nor money in the hands of a trustee for the debtor,⁴ or of an auctioneer properly employed by him;⁵ nor that left with the sheriff in part payment of the debt,⁶ or by a subsequent sheriff.⁷ Money levied by the sheriff is not seizable under a writ against the creditor.⁸ Cut grass in the possession of a debtor, but sold by him before execution, is not seizable,⁹ nor goods lent on hire; but the owner of such goods must, in this instance, inform the sheriff on seizure that they are lent for a term only;¹⁰ and in that case the sheriff can only seize the interest of the debtor.¹¹ Goods of a testator in the hands of an executor are exempt under a writ against such executor.¹²

As to husband and wife, since the Married Woman's Property Act, 1882, their property respectively continues separate in the absence of settlement. By sect. 14 a husband is liable for the debts of his wife, and for all contracts entered into, and for all wrongs committed by her before marriage, including any liabilities to which she may be subject under the Companies Acts to the extent of all property whatsoever belonging to her which he shall have acquired or become entitled to from or through her, after deducting therefrom any payments made by him and any sums for which judgment may have been *bonâ fide* recovered against him in any proceeding at law in respect of any such debts, contracts, or wrong, for or in respect of which his wife was liable before her marriage.¹³

Personal chattels bequeathed to a woman for her separate use are not seizable for the husband's debt.¹⁴ But a husband who succeeds to his wife's property in his marital right is liable in respect of her separate estate to the same extent as she would be if living.¹⁵

By 25 & 26 Vict. c. 89, s. 163, where any company is being wound up by or subject to the supervision of the court, any execution put in force¹⁶ against the estate or effects of the said company

¹ 59 & 60 Vict. c. 25, s. 35.

² *Rogers v. Kenny*, 9 Q. B. 592.

³ *Legg v. Evans*, 6 M. & W. 36.

⁴ *France v. Campbell*, 6 Jur. 105.

⁵ *Brown v. Parrott*, 4 Beav. 585.

⁶ *Bell v. Hutchinson*, 2 D. & L. 43;
13 L. J. Q. B. 244.

⁷ *Masters v. Stanley*, 8 Dow. 169.

⁸ *Wood v. Wood*, 12 L. J. Q. B. 141. [Otherwise in I. 40 & 41 Vict. c. 56; *O'Malley v. Brabazon*, 15 L. R. I. 561.]

⁹ *Tomkinson v. Russell*, 6 East, 602.

¹⁰ *Dean v. Whitaker*, 1 C. & P. 347.

¹¹ *Gordon v. Harper*, 7 T. R. 9; see *Ward v. Macaulay*, 4 D. & E. 489. [Mere possession is not seizable, *Kearney v. Ryan*, 2 L. R. I. 61.]

¹² *Farr v. Newman*, ib. 621, see *Whale v. Booth*, ib. 642.

¹³ 45 & 46 Vict. c. 75.

¹⁴ *Newlands v. Paynter*, 4 M. & Cr. 408.

¹⁵ See *Pelton v. Harrison*, 1891, 2 Q. B. 422.

¹⁶ See *In re Lond. v. Devon Co., L.* R. 12 Eq. 190.

after the commencement of the said winding-up shall be void. Except by leave of the Court.¹ Where the sheriff was in possession before, but received moneys after the commencement of the winding-up, he was ordered to account to the liquidator for all moneys so received.²

By 30 & 31 Vict. c. 127, s. 4, the engines, tenders, carriages, trucks, machinery, tools, fittings, materials, and effects, constituting the rolling-stock and plant used or provided by a company for the purposes of the traffic on their railway, or of their stations or workshops shall not, after their railway, or any part thereof, is open for public traffic, be liable to be taken in execution. And this includes the case of plant going over to the contractor on completion of the line.³

A cost-book mining company is a partnership only.⁴

Where taxes are in arrear the goods are not seizable unless the execution creditor before sale or removal pay the collector such arrears, provided they be not claimed for more than one year.⁵

Where rent is in arrear the goods cannot be taken unless before removal such arrear be paid to the landlord, provided the claim be not for more than one year.⁶ And this is extended in the case of weekly tenements, or in that of any term less than a year to four such terms;⁷ and applies also to the case of growing crops.⁸ Where a tenant's fixtures become the property of the landlord by the terms of the Agricultural Holdings Act not having been complied with,⁹ they cannot be seized in execution against the tenant. As to the above-cited statute of Anne, it has been held not to apply to a ground landlord,¹⁰ but it does to a lessee and under-tenant.¹¹ It also applies to forehand rents.¹²

The tenancy must be actually in existence at the time of seizure,¹³ but the claim of the landlord is confined to rent due at that time.¹⁴ The sheriff must have notice of such claim while the goods are in his hands,¹⁵ or knowledge thereof, which is equivalent thereto.¹⁶ The goods must be actually removed for the Act to apply,¹⁷ and the fact that a sufficient distress remained is no defence.¹⁸ In such case

¹ Sect. 87; see *Westbury v. Twigg*, 1892, 1 Q. B. 77. [*Allan v. Cowan*, 20 R. 36.]

² *In re The Opera, Limited*, 64 L. T. 313; 39 W. R. 398; see *G. N. Ry. v. Tahourdin*, 13 Q. B. D. 320.

³ *Beeston v. Marriott*, 4 Giff. 436; 11 W. R. 896.

⁴ 1 Lind. 4th ed. p. 694; see *ante*, p. 69.

⁵ 43 & 44 Vict. c. 19, s. 88 (1).

⁶ 8 Anne c. 14, s. 1. [I. 9 Anne c. 8, s. 1.] See *Forster v. Cookson*, 1 Q. B. 419, and *Waldron v. Sutcliffe*, 26 Ir. C. L. 444.

⁷ 7 & 8 Vict. c. 96, s. 67.

⁸ 14 & 15 Vict. c. 25, s. 2.

⁹ 46 & 47 Vict. c. 61, s. 34, see *ante*, p. 72.

¹⁰ *Bennett, Stra.* 787.

¹¹ *Thurgood v. Richardson*, 7 Bing. 428.

¹² *Harrison v. Barry*, 7 Price, 690; *Yates v. Rutledge*, 5 H. & N. 249; 29 L. J. Ex. 117.

¹³ *Cox v. Leigh*, L. R. 9 Q. B. 333; 22 W. R. 730; 30 L. T. 444.

¹⁴ *Reynolds v. Barford*, 7 M. & G. 449; 2 D. & L. 327; 13 L. J. C. P. 177. *Re Davis*, 54 L. T. 804.

¹⁵ *Armist v. Garnett*, 3 B. & Ald. 440.

¹⁶ *Andrews v. Dixon*, *ib.* 645.

¹⁷ *White v. Binstead*, 13 C. B. 304; 22 L. J. C. P. 115.

¹⁸ *Colyer v. Speer*, 2 B. & B. 67.

the sheriff's duty is to withdraw,¹ unless the landlord's agent takes from the officer an undertaking and consents to the sale.²

The sheriff must inquire into the *bonâ fides* of the claim;³ but the execution-creditor, if he assents to the proceedings, cannot afterwards turn round if a mistake has been made.⁴

Venditioni Exponas.—This writ is in aid of that of *fi. fa.*, and is a command to the sheriff to sell the goods.⁵ On receipt thereof it is his duty to sell for as much as he is able.⁶ He need not, of course, delay sale until the issue of this writ.

By 53 & 54 Vict. c. 71, s. 11:⁷ (1) Where the goods of a debtor are taken in execution, and before the sale thereof, or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the sheriff⁸ that a receiving order has been made against the debtor, the sheriff shall on request⁹ deliver the goods, and any money seized or received in part satisfaction of the execution, to the official receiver or trustee under the order, but the costs of the execution¹⁰ shall be a first charge on the goods or money so delivered, and the official receiver or trustee may sell the goods, or an adequate part thereof, for the purpose of satisfying the charge. (2) Where under an execution in respect of a judgment for a sum exceeding £20, the goods of a debtor are sold, or money is paid in order to avoid sale, the sheriff shall deduct the costs of the execution¹⁰ from the proceeds of the sale or the money paid, and retain the balance for fourteen days;¹¹ and if within that time notice is served on him¹² of a bankruptcy petition having been presented against or by the debtor, and a receiving order is made against the debtor thereon, or on any other petition of which the sheriff has notice, the sheriff shall pay the balance to the official receiver, or as the case may be, to the trustee, who shall be entitled to retain the same as against the execution creditor.

The section is not applicable where the sheriff has on the representation of the debtor quitted the premises and thus given up possession.¹³

Where the sheriff is in possession under several writs, and receives notice as above, only those writs are entitled to be paid

¹ *Foster v. Hilton*, 1 Dow. 35; *Cocker v. Musgrove*, 15 L. J. Q. B. 365; 9 Q. B. 223.

² *Rothery v. Wood*, 3 Camp. 24. [*Allen v. Lloyd*, 2 Ir. C. L. 53.]

³ *Frost v. Barclay*, 3 Ti. Rep. 617.

⁴ *Stuart v. Whitaker*, Ry. & M. 310.

⁵ *Cameron v. Reynolds*, Cowp. 406.

⁶ *Keightley v. Birch*, 3 Camp. 524.

⁷ [I. 35 & 36 Vict. c. 58, s. 54.] *Re Crook*, 71 L. T. 236; 42 W. R. 6.

That on the bailiff is not sufficient: *Ex parte Warren*, 15 Q. B. D. 48.

⁸ See *Woolford's Trustee v. Levy*, 66 L. T. 812.

¹⁰ See the cases, *post*, p. 184.

¹¹ These run from time of sale, and not from that of receipt of proceeds by sheriff: *Ex parte Ross*, 21 Q. B. D. 472; 36 W. R. 845; 88 L. J. Q. B. 19; 59 L. T. 341. See *Lole v. Betteridge*, 77 L. T. 548, 1898, 1 Q. B. 256.

¹² That on the bailiff is not sufficient; *Bellyse v. M'Ginn* [1891], 2 Q. B. 227.

¹³ *Bower v. Hett*, 1895, 2 Q. B. 337; 73 L. T. 176.

which are for less than £20, and which would have been paid had not bankruptcy supervened.¹ And where he has several writs it is immaterial under which he sells.²

The goods must be sold within a reasonable time after seizure³ and before the return of the *vend. exp.*⁴ He is responsible for their safe custody until sale.⁵ The sale must be for not much below the real value,⁶ and is for ready money and immediate delivery. He is not therefore justified in selling more than necessary to satisfy the writ on the speculation that the actual delivery may be prevented by loss or accident.⁷ If an adequate price be obtained they must be sold, and the plaintiff may be the purchaser.⁸ If not sold he must return that they remain in his hands for want of buyers.⁹

Where a tenant entered under an agreement for a lease and paid the stipulated rent, it was held that a tenancy from year to year was created, which the sheriff might sell under this writ.¹⁰ Where a lease and fixtures are taken they may be sold separately if there is difficulty in finding a purchaser for the whole¹¹; and where an outgoing tenant has agreed to assign the remainder of his term, it may be sold before an actual assignment, and have set on it the value agreed to be given.¹²

If payment is made to the sheriff before sale, that is a bar to further execution.¹³

An officer who receives notice of an injunction restraining the sale should at once verify the information.¹⁴

By 56 Geo. III. c. 50, s. 3, the sheriff may sell the crops or produce mentioned in sec. 1¹⁵ subject to an agreement to expend it on the land.

By 46 & 47 Vict. c. 52, s. 145, where the sheriff sells goods of a debtor under an execution for a sum exceeding £20 (including legal incidental expenses) the sale shall, unless the Court from which the process issued otherwise orders, be made by public auction and not by bill of sale or private contract, and shall be publicly advertised on and during three days next preceeding the day of sale. This section does not seem to apply where the goods are sold to levy a sum not exceeding £20, including legal incidental expenses, although judgment has been entered for a greater sum,¹⁶ but it could probably

¹ *In re Pearce*, 14 Q. B. D. 966.

² *Jones v. Atherton*, 7 Taunt. 56; 2 Marsh. 375; *Drewe v. Lawson*, 11 Ad. & E. 529; 3 P. & D. 245.

³ *Bales v. Wingfield*, 2 N. & M. 831.

⁴ *Jacobs v. Humphrey*, 2 C. & M. 413.

⁵ *Sly v. Finch*, Cro. Jac. 518.

⁶ *Keighley v. Birch*, *ubi supra*; and see *Edge v. Kavanagh*, 24 L. R. Ir. 1.

⁷ *Aldred v. Constable*, 6 Q. B. 370; *Cook v. Palmer*, 6 B. & C. 739.

⁸ *Leader v. Danvers*, 1 B. & P. 360.

⁹ *Keighly v. Birch*, *ubi supra*.

¹⁰ *Westmoreland v. Smith*, 1 M. & R. 137.

¹¹ *Barnard v. Leigh*, 1 Stark. 43.

¹² *Sparrow v. Earl of Bristol*, 1 Marsh. 10.

¹³ *Woods v. Finnis*, 7 Ex. 570; *Gregory v. Sloman*, 1 E. & B. 368.

¹⁴ *Exp. Langley*, 13 Ch. D. 110.

¹⁵ See *ante*, p. 72. [Not applicable to I.]

¹⁶ *Ex parte Berthier*, 7 Ch. D. 882; *Turner v. Bridget*, 8 Q. B. D. 392; *Mostyn v. Stock*, 9 ib. 432.

not be evaded by selling portions at different times of less than £20 if the total to be levied exceeded that amount.¹

If a sale contrary to this section take place, it is until set aside by the Court valid as against a subsequent execution-creditor.²

For the fees, see *post*.³ The poundage is £5 per cent. on the first £100 and 2½ per cent. after.⁴

Distringas.—This writ, which issues against a sheriff who has gone out of office and returns that he has seized the goods, but that they remain in his hands for want of buyers, is also in aid of that of *fi. fa.*

The duty of the sheriff is to distrain the land and chattels of the late sheriff in order to compel sale of the goods still remaining in his hands.⁵

Ne Exeat Regno.—This writ is now apparently confined to cases arising under the Debtor's Act.⁶ The sheriff's duty is to take the defendant and keep him in custody until he give the required security. But on final judgment he must be discharged.⁷

Nocumento amovendo.—This writ issues to remove a wall or other obstruction which has been adjudged a nuisance.

Possession.—This writ is employed in actions for the recovery of land to put a successful plaintiff into possession of the premises.⁸

The rule as to breaking doors under this writ is contained in *Semayne's Case*,⁹ the second resolution in which is that where any house is recovered by any real action the sheriff may break the house and deliver the seisin or possession to the plaintiff.

The sheriff's duty is to deliver the property to the plaintiff, and for this purpose he must remove all persons off the premises unless the plaintiff recovers only an undivided portion, in which case he cannot turn persons out of possession, but can only put the plaintiff in possession of the portion to which he is entitled.¹⁰ If persons be left on the premises it is not a complete execution, unless they attorn to the plaintiff.¹¹ No notice is necessary to the persons actually in possession.¹² It is necessary that the plaintiff point out to the sheriff

¹ *Ex parte Villars*, 9 Ch. 732; *Jones v. Purcell*, 11 Q. B. D. 430; County Court rules 1889, 12 a. [The section does not apply to I.]

² *Crawshaw v. Harrison*, 1894, 1 Q. B. 79.

³ Page 181.

⁴ 29 Eliz. c. 4.

⁵ 1 Chit. Arch. 575; *Clerk v. Withers*, 6 Mod. 300.

⁶ 32 & 33 Vict. c. 62, s. 6. *Hands v. Hands*, 43 L. T. 750.

⁷ *Hume v. Druyff*, L. R. 8 Ex. 214. See Order lxix.

⁸ See Order xlvii. As to possession under the Lands Clauses Act, see 8 & 9 Vict. c. 18, s. 91.

⁹ 5 Rep. 91.

¹⁰ Chit. Arch. 851.

¹¹ *Upton v. Wills*, 1 Leon. 145.

¹² *Minet v. Johnson*, 6 Ti. Rep. 417. [As to execution anew on unlawful re-entry and restitution, I., see 23 & 24 Vict. c. 154, ss. 70, 71, 96.]

the precise lands to which he is entitled;¹ if more be taken the Court will order restitution,² and if no person attend the sheriff on behalf of the plaintiff to be put in possession, this is a good return.³ It is usual for the lessor of the plaintiff to give the sheriff an indemnity for executing the writ.⁴ The delivery of part is sufficient,⁵ unless it be in the possession of several persons, or an undivided share.⁶

For the fees, see *post*.⁷ The poundage is 1s. in the pound on the yearly value of the lands up to £100, and 6d. in the pound for every £ above that sum.⁸

Supersedeas.—This is a general writ, varying in form with the previous writ issued, and requires the sheriff to supersede the execution under such previous writ.

TIPSTAFF.

Warrants of committal issued by way of process and not by way of punishment fall into this class.⁹

GAOLERS.

Prisoners committed under such warrants or under attachment in similar circumstances are first-class misdemeanants.¹⁰

THE ADMIRALTY MARSHAL.

The warrant of the Admiralty Division for the arrest of a ship, cargo or freight, is addressed to this officer,¹¹ and his substitutes, and commands them to detain the property mentioned therein in safe custody until the further order of the Court.¹²

When this officer sends by telegram to his substitute at an out-port notice of the issue of the warrant, and the substitute communicates it to the master of the vessel, it is a contempt of Court to move the vessel from the place where she is lying.¹³

The jurisdiction extends to England and Wales and three miles from the coast.¹⁴ Where the officer, on finding that the vessel had sailed, pursued her, and overtaking her within the jurisdiction, seized her, brought her back into port and dismantled her, the arrest was

¹ *Davenport v. Rhodes*, 11 M. & W. 608; *Thynne v. Sarl* [1891], 2 Ch. 79; 64 L. T. 781.

² *Cottingham v. King*, 1 Burr. 627.

³ Wat. p. 322.

⁴ Com. Dig. Ex. A. 3.

⁵ *Cottingham v. King*, *ubi supra*; *Floyd v. Bethel*, 1 Rol. 420.

⁶ *Saul v. Dawson*, 3 Wils. 47.

⁷ Page 181.

⁸ 50 & 51 Vict. c. 55, s. 39 (5).

[Not applicable to I.]

⁹ *Ante*, p. 12.

¹⁰ *Ibid*.

¹¹ Or the officer of Customs. *The Alexander*, 1 Dods. 282; *The Dundee*, 1 Hagg. 124.

¹² Order v. r. 16 (38). As to arrest when bail insufficient, see *The Freedom*, 3 Ad. & E. 495. [I. G. Order 1867, r. 27.]

¹³ *The Seraglio*, 10 P. D. 120.

¹⁴ 41 & 42 Vict. c. 73.

held illegal,¹ and so also was a subsequent detention effected by parties acting in concert with the original arresters, after she had been so brought back into port.²

Service of the warrant must be made, and this is done by affixing it to the mast or hull.³ An arrest so effected extends not only to the vessel,⁴ but to sails and rigging taken on shore for the purpose of safe custody,⁵ and all other things of a like kind appurtenant to the ship, but in salvage cases the personal luggage of passengers is exempt,⁶ and so are seamen's clothes.⁷

The cargo may be proceeded against in respect of liability attaching to it, or simply as security for freight which is due,⁸ and part may be seized for that due on the whole.⁹ If the cargo be on board and proceeded against specifically and named in the warrant, or if not so named, is proceeded against for freight, the arrest of the ship arrests the cargo.¹⁰ But if landed and warehoused or transhipped it is otherwise, and here service must be effected by placing the warrant on the cargo, or if access to it be refused, by leaving a copy with the custodian thereof.¹¹

The arrest binds the whole property, however great its value, and whether there be a possessory lien on it or not.¹² If the property be already in the hands of the sheriff the warrants take priority in order of time.¹³

The marshal is responsible for the safe custody of property while under arrest.¹⁴ Where a *caveat* has been entered against the release of the property, he is bound to give notice to the party entering the same before he releases.¹⁵ Otherwise he must, on receipt of a release, release the property, and this extends to all property mentioned therein, whether it be in the same or different places.¹⁶ In a suit of restraint the required security must be first given.¹⁷

In a suit of possession the marshal must deliver the ship to the plaintiff.¹⁸

Commissions of appraisements, unlivery and removal are addressed to this officer and require him to appraise and certify the value or unload or remove the goods as the case may be.

¹ *Borjesson v. Carlberg*, 3 App. Cas. 1316.

² *Ibid.* 1322.

³ Order ix. r. 12 (59). [I. r. 27.]

⁴ Public ships are exempt. *The Comus*, 2 Dod. 464; *The Parlement Belge*, 4 P. D. 129; 5 *ib.* 187.

⁵ *The Alexander. The Dundee, ubi supra.*

⁶ *The Willem III.* L. R. 3 A. & E. 487.

⁷ *The Vulture*, Prit. Ad. Dig. II. 514.

⁸ *The Lady Durham*, 3 Hagg. 200; *The Victor*, Lush. 72.

⁹ *The Roecliffe*, 2 A. & E. 363.

¹⁰ Where freight is not to be arrested a note is appended to the *præcipe*.

¹¹ Order x. r. 13 (60); ix. r. 14 (61).

¹² *The Harmonic*, 1 W. Rob. 178; *The Norðstjernan*, Swa. 260.

¹³ Order xlii. r. 29; *The Flora*, 1 Hagg. 298; *The Bloomer*, 11 L. T. 46.

¹⁴ *The Hoop*, 4 Rob. 145; *The Rendsbury*, 6 *ib.* 157.

¹⁵ Order xxix. r. 6 (327). See *The Seraglio, ubi sup.* [I. r. 67.]

¹⁶ Order xxix. r. 4 (322). [I. r. 63.]

¹⁷ *The Dickenson*, 10 P. D. 15; 33 W. R. 400.

¹⁸ *Ibid.*

Where there is an order for sale the marshal or his substitutes must sell and pay the proceeds into Court.¹ The sale in the absence of other order must be by public auction.² If the property has been already appraised it cannot be sold for less than the appraisement.³ The sale being effected the marshal must deliver the property to the purchaser, and if required execute a bill of sale to him.⁴

For the fees payable see *post*.⁵

¹ Order li. r. 14 (693). [I. r. 134.]

² *Cooté* 108.

³ *Ibid.*

⁴ *Chastenauf v. Capeyron*, 7 A. C. 127.

⁵ Page 185.

2. OTHER THAN THOSE OF SUPERIOR COURTS AT COMMON LAW.

THE TIPSTAFF.

The warrants of the Bankruptcy Division of the High Court are addressed to this officer.¹ By the Bankruptcy Act, 1883, sects. 24 and 25, the judge of that division has power to commit a debtor for offences against those sections.²

And orders made under sect. 5 of the Debtors Act, 1869, for the committal of a defendant also fall within this class.³ This order does not apply in case of non-payment by a married woman of a judgment-debt payable out of her separate estate under 45 & 46 Vict. c. 75, s. 1 (2).⁴ There must be evidence of means to pay, but it is not necessary that those means should have been derived from the debtor's earnings or a fixed income,⁵ and it is sufficient if there has been the means to pay any part of it.⁶ It includes costs,⁷ and may be exercised if payment is to be by instalments.⁸ It need not be executed within a year, but remains in force as long as the judgment.⁹

THE HIGH BAILIFF.

The warrants and orders of the County Court in this category are the following :—

Warrants of committal by way of process and not punishment,¹⁰ whether the order be final or interlocutory.¹¹

Under the Bankruptcy Act, 1883, s. 100, this Court has all the powers of the Bankruptcy Division, and its orders may be enforced in like manner.¹²

Orders of committal made under sect. 5 of the Debtors Act, 1869. These must be exercised only by a judge or his deputy, and by

¹ See *ex p. Gutierrez*, 11 Ch. D. 798.

² See ss. 51 and 119, and 53 & 54 Vict. c. 71, s. 7. The liquidation of companies is assigned to the same Court, 53 & 54 Vict. c. 63. For fees see *post*, p. 185.

³ *Mitchell v. Simpson*, 23 Q. B. D. 373; 25 *ib.* 183.

⁴ *Scott v. Morley*, 20 *ib.* 120; 36 W. R. 67; 57 L. J. Q. B. 43; and see *Re Walter*, 55 J. P. 276, and *Pelton v. Harrison*, 1891, 2 Q. B. 422.

⁵ *In re Park*, 14 Q. B. D. 597.

⁶ *Ex parte Fryer*, 17 *ib.* 718.

⁷ *Hewitson v. Sherwin*, L. R. 10 Eq. 53.

⁸ *Evans v. Wills*, 1 C. P. D. 229; *Stonor v. Fowle*, 13 App. Cas. 20; 36 W. R. 742.

⁹ *Hermitage v. Kilpin*, L. R. 9 Ex. 205.

¹⁰ Jud. Act, 1873, s. 89; Order xlii. r. 5. *Ex parte Martin*, 4 Q. B. D. 212.

¹¹ *Richards v. Cullerne*, 7 *ib.* 623, and see *R. v. Surrey County Court*, 13 *ib.* 966.

¹² See *supra*.

an order made in open Court showing on its face the ground on which it is issued.¹ The order need not be then and there drawn up.²

Admiralty.—The warrant in Admiralty matters is to arrest and detain a ship or cargo pending the further order of the Court.

Service of the warrant is to be effected in the same manner as that in the High Court,³ and the warrant may be executed on Sunday, Good Friday, or Christmas-day.⁴ Service by a clerk in the high bailiff's office is irregular.⁵ The property must be released on receipt of an order to that effect⁶; but in a salvage action the property must be first appraised unless the plaintiff otherwise consents.⁷

Delivery.—This warrant issues for the delivery of specific property, and if the property cannot be found the lands and chattels of the defendant may be distrained.⁸

Execution on Goods.—This warrant authorises the officer to levy or cause to be levied by distress and sale of the goods and chattels of the defendant, the sum recovered by the judgment and the costs of the execution.⁹ Under it, the officer may seize and take any of the goods and chattels of such person (excepting the wearing apparel and bedding of such person or his family, or the tools and implements of his trade to the value of £5), and any money or bank notes, cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money.¹⁰ Such securities are to be held by the high bailiff as security for the amount directed to be levied.¹¹ The execution is to be superseded on the payment of the debt and costs.¹²

A claimant of goods taken in execution must deposit their values or pay the costs of keeping possession in order to prevent their being sold.¹³

If within five clear days from the taking in execution or before removal, the landlord claim in writing for rent in arrear, the bailiff shall in addition distrain for the rent so claimed and the costs thereof, and shall not within five days sell unless the goods be perishable or on request in writing of the defendant. On sale, he shall pay first the costs, then the landlord four weeks where weekly rental, two

¹ See *Kenyon v. Eastwood*, 4 Ti. Rep. 451.

² *Harris v. Slater*, W. N. (1888) 186.

³ County Court Rules, 1889, Order xxxix. rr. 12, 13.

⁴ *Ibid.* r. 11.

⁵ *The Palomares*, 10 P. D. 36.

⁶ County Court Rules, 1889, Order xxxix. r. 20.

⁷ *Ibid.* r. 21. As to the receiver selling under an order, see 57 & 58 Vict. c. 60, ss. 522, 525, 533.

⁸ Order xxv. r. 50.

⁹ 51 & 52 Vict. c. 43, s. 146. As to the duties of the officer of the Court in distraint for the recovery of tithe rent charge leviable on lands occupied by an owner, see 54 Vict. c. 8, s. 2.

¹⁰ Sect. 147. As to friendly societies, see *ante*, p. 74.

¹¹ Sect. 148.

¹² Sect. 155.

¹³ Sect. 156; *Goodlock v. Cousins*, 76 L. T. 313.

terms where less than a year, or one year in any other case, and then the amount for which the warrant issued.¹

The section does not authorise the distraint and sale of goods of a stranger,² where the bailiff is wrongfully in possession, but where he is rightfully in possession it is otherwise.³

The bailiffs may act as brokers and take the poundage allowed by the Act.⁴

As above stated the sale is not to take place until the end of five days, and in the meantime the goods are to be deposited by the bailiff in some fit place, or remain in the custody of a fit person approved by the high bailiff. The sale must be made by one of the brokers or appraisers appointed under the Act.⁵ In the case of a ship, an inventory and valuation must be first made and on completion of the purchase the high bailiff must if required execute a bill of sale to the purchaser at his expense.⁶ In execution of a judgment *in rem* the sale may be free from incumbrance.⁷

Where execution issues from the High Court and County Court the writs take priority in order of time.⁸

Where bankruptcy supervenes, the execution is superseded in the same manner as in the High Court.⁹

For the fees and poundage payable to this officer, see *post*.¹⁰

Possession.—This warrant is employed in actions for the recovery of land. It authorises the high bailiff to give possession, and for this purpose he may enter on the premises with such assistants as he shall deem necessary between 9 A.M. and 4 P.M.¹¹ The warrant is to bear date next after the day named by the judge for delivery of possession and is to continue in force for three months.¹²

For the fees, etc., see *post*.¹³

CONSTABLES.

The warrants and orders of justices in non-indictable offences are of this class.¹⁴ The officer must be in possession of the warrant at the time of execution.¹⁵ A warrant forthwith to arrest and take

¹ Sect. 160.

² *Beard v. Knight*, 27 L. J. Q. B. 359; 8 El. & Bl. 865, and see *Wilcoxson v. Searby*, 29 L. J. Ex. 154; *Foulger v. Taylor*, 5 H. & N. 202.

³ *Hughes v. Smallwood*, 25 Q. B. D. 306; 59 L. J. Q. B. 503; 63 L. T. 198.

⁴ Sect. 159.

⁵ Sect. 154. As to sales by bailiffs of inferior courts which are to be after three days unless perishable goods on request of owner, see 7 & 8 Vict. c. 19, s. 6.

⁶ Order xxxix., r. 42. As to company matters see *In re Bassett's Co.*, 1894, 2 Q. B. 96; 70 L. T. 658.

⁷ *The Ruby*, 1898, P. 52; 78 L. T. 267.

⁸ 51 & 52 Vict. c. 43, s. 152.

⁹ See *ante*, p. 76.

¹⁰ Page 185.

¹¹ Sect. 142.

¹² Sect. 143.

¹³ Page 185.

¹⁴ See *R. v. Paget*, 8 Q. B. D. 151; 45 L. T. 794; *R. v. Pratt*, L. R. 5 Q. B. 176; 18 W. R. 626. As to the power of councils of conciliation see 59 & 60 Vict. c. 80.

¹⁵ *Galliard v. Laxton*, 2 B. & S. 363; 5 L. T. 835.

before a magistrate does not mean to take forthwith before a magistrate.¹ In the case of sureties to keep the peace if the warrant require the party to come before some justice and on refusal for the officer to convey him to gaol he may on refusal so convey him without further warrant. Where the warrant is thus general the officer has the election to bring him before what justice he pleases and to carry him to gaol for refusal to find sureties before such justice. But if the warrant direct the party to be brought before the justice who made it, the officer ought not to carry him before another.²

Commitments for non-payment of rates are in the nature of civil process³ and so is a conviction for not delivering up books to a town council⁴ or not paying a cab fare⁵ and in all cases of civil debts.⁶

The powers under warrants of distress have been already mentioned.⁷

In recovery of tenements, within not less than twenty-one or more than thirty-one days of its date, they are to enter the premises (by force if needful) and give possession to the landlord or agent. Such entry is not to be made on Sunday, Good Friday and Christmas day nor except between 9 A.M. and 4 P.M.⁸

Search warrants under the Explosives,⁹ Licensing,¹⁰ and Vagrant Acts,¹¹ are of this class, and here power to enter is of the essence.

As to explosives, any officer who has reasonable cause to suppose that any offence against the Act is being committed in respect of any carriage (not being on a railway) or any boat conveying, loading or unloading any explosive and that the case is one of emergency, may stop, enter, inspect and examine such carriage or boat and generally take such precautions as may be necessary to remove any danger as if the explosives were liable to forfeiture. And the officer is to be in the same position as if armed with a search warrant.¹²

Similar power is conferred on constables or any officer authorised by the local authority in the case of the hawking of petroleum.¹³ Here the amount conveyed is not to exceed twenty gallons, to be in closed vessel, properly ventilated; lights not to be brought near; carriage not to permit of escape; all precautions to be taken to prevent accident; no other explosive to be in same carriage while being used.¹⁴

Under orders of the local authority or Local Government Board in case of alleged nuisance, the officer is clothed with the like powers as those of officers of the local authority.¹⁵

¹ *O'Brien v. Brabner*, 49 J. P. 227.

² 1 Hawk. c. 28, ss. 12, 13.

³ *R. v. Loudon*, 34 L. J. M. C. 193; *R. v. Master*, 38 ib. 73.

⁴ *Eggington*, 2 El. & Bl. 717.

⁵ *R. v. Kerswill*, 43 W. R. 59.

⁶ 38 & 39 Vict. c. 90, s. 9; 42 & 43 Vict. c. 49, s. 6.

⁷ *Ante*, p. 20.

⁸ 1 & 2 Vict. c. 74, s. 1.

⁹ 38 & 39 Vict. c. 17, s. 73.

¹⁰ 37 & 38 Vict. c. 49, s. 17.

¹¹ 5 Geo. IV. c. 83, s. 13.

¹² 38 & 39 Vict. c. 17, s. 75. See s. 73 as to an order to enter premises, and s. 74 as to the destruction of the substance, a sample being first taken.

¹³ 34 & 35 Vict. c. 105, s. 13; 44 & 45 Vict. c. 67, s. 4.

¹⁴ Sect. 2.

¹⁵ 38 & 39 Vict. c. 55, ss. 105, 106; 54 & 55 Vict. c. 76, s. 12. Orders to destroy dogs are made under 34 & 35 Vict. c. 56, s. 2.

Orders to inspectors and sergeants of police to visit the places of business of registered dealers in old metals.¹

Orders as to the apprehension or detention of an alleged lunatic.² They may by order of a justice convey a lunatic to an institution for lunatics³ which may be suspended, provision being made for temporary detention.⁴ They may by warrant of a justice duly backed arrest a lunatic escaped from Scotland or Ireland,⁵ and under that of the Secretary of State remove a lunatic to a vessel to be conveyed to his own country.⁶ They may also by order in writing of the master of an institution retake an escaped lunatic.⁷

And orders that children to whom the Industrial Schools Act, applies may be taken to the workhouse.⁸

The following are verbal orders :—

In the case of persons disturbing a petty sessional court the justices have power at common law to order their removal.⁹ A like power is conferred on revising barristers when sitting,¹⁰ and it is presumed that registrars have the same power.¹¹

A coroner may order the forcible exclusion of a party from the Court,¹² and so may a justice on a preliminary inquiry, even though he be the attorney of the party accused ;¹³ but if the inquiry be final and of a judicial nature all persons have a right to be present.¹⁴

As to witnesses it seems that they may be requested to leave the Court during the hearing ; but that if they do not choose to obey, their evidence cannot be rejected on that account.¹⁵

Out of sessions justices may verbally commit offenders in cases of breach or apprehended breach of the peace.¹⁶

A returning officer at an election may order a person who misconducts himself at a polling station to be removed by a constable ;¹⁷ or, if such person commit any offence there, to be arrested.¹⁸

With regard to local authorities generally, there would appear to be no power at common law to sit with closed doors.¹⁹ But this would apparently not apply to meetings of committees.

As regards the Metropolis, the Commissioner may by order in writing authorise a superintendent constable, with such constables as he thinks necessary, to enter any premises kept or used for the

¹ 24 & 25 Vict. c. 110, s. 7.

² 53 & 54 Vict. c. 5, ss. 13, 15, 21 ; and see 54 & 55 Vict. c. 65, ss. 2, 19.

³ *Ibid.*, c. 5, s. 16.

⁴ Sect. 19.

⁵ Sects. 86, 89.

⁶ Sect. 71.

⁷ Sect. 85.

⁸ 29 & 30 Vict. c. 118, s. 19.

⁹ See *Ex parte Van Sandau*, 1 Phil. 445.

¹⁰ 28 & 29 Vict. c. 36, s. 16.

¹¹ There is no power to commit, 46 & 47 Vict. c. 52, s. 99. As to referees see Order xxxvi., r. 51.

¹² *Garnett v. Ferrand*, 6 B. & C. 618.

¹³ 11 & 12 Vict. c. 42, s. 19. *Cox v. Coleridge*, 1 B. & C. 37. See *R. v. Griffiths*, 16 C. C. C. 46.

¹⁴ *Ibid.*, c. 43, s. 12. *Daubeny v. Cooper*, 10 B. & C. 287, and see *Willis v. Maclachlan*, 1 Ex. D. 376.

¹⁵ *Roberts v. Garrett*, 6 J. P. 154 ; *Ex parte Wright*, 39 *ib.* 85.

¹⁶ *Still v. Wells*, 7 East 533 ; *Anon.*, Lofft. 243. Cf. *Malony v. French*, 3 C. L. Ir. 391 ; *Forbes v. Lloyd*, 10 *ib.* 552.

¹⁷ 35 & 36 Vict. c. 33, s. 9.

¹⁸ 6 & 7 Vict. c. 18, s. 86 ; 45 & 46 Vict. c. 50, s. 86.

¹⁹ *Purcell v. Sowler*, 2 C. P. D. 219.

purpose of cock-fighting, etc., and to take into custody all persons found therein without lawful excuse.¹ A similar power is conferred in the case of an unlicensed theatre at any time when the same shall be open for the reception of persons resorting thereto.²

And a magistrate may authorise one of these officers to remove persons from dangerous structures.³

WEIGHTS INSPECTORS.

The warrant of a justice to inspect measures weights and scales is executed by these officers.⁴ Acting thereunder he may seize and detain any weight, measure, scale, balance or steelyard which is liable to forfeiture, and may for the purpose of such inspection, enter any place, whether a building or in the open air, whether open or inclosed, where he has reasonable cause to believe that there is any weight, etc., which he is authorised by the Act to inspect.⁵

Where there is no fraud there is no offence,⁶ nor where the weights are against the seller himself.⁷

WATER BAILIFFS.

The warrant of a justice to enter suspected places, either by day or night, and there seize all illegal engines, or any salmon illegally taken, is addressed to these officers, and continues in force for one week.⁸

Justices may by order authorise these officers during twenty-four hours from the time of issue to enter and remain on land near a salmon river for the purpose of detecting offences.⁹

GAOLERS.

The warrants of this class addressed to these officers are commitments in cases of mere misdemeanour or offence, no hard labour generally being imposed.

¹ 2 & 3 Vict. c. 47, s. 47. The same power is conferred on local authorities by 10 & 11 Vict. c. 89, s. 36.

² *Ibid.*, s. 46. *Fredericks v. Howie*, 1 H. & C. 381.

³ 18 & 19 Vict. c. 122, s. 80.

⁴ A general warrant is sufficient. *Hutchings v. Reeves*, 9 M. & W. 747; 11 L. J. M. C. 109.

⁵ 41 & 42 Vict. c. 49, s. 48. There need be no weight there: *Kershaw v. Johnson*, 1 C. & K. 329, and see *Wray v. Reynolds*, 1 E. & E. 165.

⁶ *Withall v. Francis*, 42 J. P. 612.

⁷ *Booth v. Shadgett*, L. R. 8 Q. B. 352; 42 L. J. M. C. 98; 21 W. R. 845; 29 L. T. 30. See *L. & N. W. Ry. v.*

Richards, 2 B. & S. 326; 5 L. T. 792; *Gt. W. Ry. v. Bailie*, 34 L. J. M. C. 31; 13 W. R. 203; 11 L. T. 418, and *Carr v. Stringer*, L. R. 3 Q. B. 433; 37 L. J. M. C. 120; 16 W. R. 859; 18 L. T. 399.

⁸ 24 & 25 Vict. c. 109, s. 34, and see *post*, p. 124. Extended to all freshwater fish by 41 & 42 Vict. c. 39, s. 9.

⁹ 28 & 29 Vict. c. 121, s. 31. This warrant and order may be addressed to conservators, and these may issue a like order which continues in force for two months, 36 & 37 Vict. c. 71, s. 37—extended to all freshwater fish by 48 Vict. c. 11, s. 3. As to fish passes see 36 & 37 Vict. c. 71, s. 46.

Under a *ne exeat regno* the time is limited to six months,¹ and under Debtors Act orders to six weeks.² As to sureties for the peace see *ante*.³ In civil matters the persons detained are in the class of debtors. The duty of the gaoler in such case is pointed out *infra*.⁴

OVERSEERS.

Warrants of distress for poor-rates are executed by these officers.⁵ Paid assistant overseers have the same powers as overseers⁶; but local collectors of rates have not. In this case the Summary Jurisdiction Act applies and the warrant must be executed by a constable.⁷

The goods of any person assessed and refusing to pay the sum assessed for poor-rates may be levied not only in the place for which such assessment was made; but in any other place within the same county or precinct, and if sufficient distress cannot be found within the said county or precinct on oath made before some justice of any other county or precinct (which oath shall be certified under the hand of such justice on the said warrant), such goods may be levied in such other county or precinct by virtue of such warrant and certificate.⁸ The distress must be followed by sale of such goods to the amount required, the overplus, if any, to be returned to the owner.⁹

There must be a demand before levy,¹⁰ and that of the exact sum demanded,¹¹ but it need not be personal.¹² There can, however, apparently be no levy upon the representative of a person who dies before it is paid.¹³ Money may be distrained as well as goods.¹⁴ The distress may be made by deputy.¹⁵

The cost of the levy and of the broker or other officer for his attendance may also be levied.¹⁶

On appeal from any poor-rate which is either amended or quashed, the sum assessed may, notwithstanding, be levied and applied in satisfaction of the next effective rate.¹⁷ Notice of appeal does not prevent distress; but no greater sum shall be proceeded for than that assessed in the last effective rate.¹⁸

As to the effect of a bill of sale, see *ante*.¹⁹

¹ 32 & 33 Vict. c. 62, s. 6.

² S. 5. [Cf. S. 43 & 44 Vict. c. 34, s. 4. I. 35 & 36 Vict. c. 57, s. 8.]

³ Page 31.

⁴ Page 121.

⁵ *R. v. Price*, 5 Q. B. D. 300; 49 L. J. M. C. 49. As to county rates, see 15 & 16 Vict. c. 81, s. 27, and as to borough, see 45 & 46 Vict. c. 50, s. 148.

⁶ 59 Geo. III. c. 12, s. 7; 7 & 8 Vict. c. 101, s. 61.

⁷ 38 & 39 Vict. c. 55, s. 256; 3 & 4 Will. IV. c. 90.

⁸ 17 Geo. II. c. 38, s. 7; 54 Geo. III. c. 170, s. 12.

⁹ 43 Eliz. c. 2, s. 3.

¹⁰ *East India Company v. Skinner*, 1 Bott. 249.

¹¹ *Hurrell v. Wink*, 8 Taunt. 369; *Morton v. Brammer*, 29 L. J. M. C. 218; 2 L. T. 600.

¹² *R. v. JJ. Gloucester*, 24 J. P. 39; *Yewdall v. Craven*, 29 *ib.* 197; 11 L. T. 368.

¹³ *Stevens v. Evans*, 2 Burr. 1152.

¹⁴ *Hutchins v. Chambers*, 1 *ib.* 579.

¹⁵ *Walsh v. Southworth*, 20 L. J. M. C. 165.

¹⁶ 39 & 40 Vict. c. 61, s. 31.

¹⁷ 41 Geo. III. c. 23, s. 1.

¹⁸ Sect. 2.

¹⁹ Page 31.

Where bankruptcy supervenes, there is no power to distrain; but the claim must be proved as a debt which is entitled to preferential payment.¹

Distress levied against the estate or effects of a company in liquidation is void.² But where they had levied an injunction was refused unless the liquidator paid the amount due.³

Goods covered by debentures and in possession of a receiver appointed by the trustee of the covering deed are not distrainable, either for poor or district rates assessed against the company.⁴ Otherwise where the possession is that of a receiver appointed in an action.⁵

By 57 Geo. III. c. 93, s. 1, distresses for rates under £20 are not to be charged for otherwise than as in the schedule thereto.⁶

Orders for the removal of paupers are addressed to these officers or the guardians.⁷ Such orders must contain description of the pauper,⁸ and actual chargeability;⁹ but not the grounds on which the justices arrive at their conclusion.¹⁰

Justices may by order require a lunatic to be apprehended¹¹ or released.¹² The guardians have a like power.¹³

EXPLOSIVES INSPECTORS.

Any of the following officers—namely, any Government inspector under the Explosives Act, any chief officer of police, and any superior officer appointed for the purposes of this Act . . . may for the purpose of ascertaining whether the provisions of this Act with respect to the conveyance, loading, unloading and importation of an explosive are complied with,¹⁴ enter, inspect and examine at any time, and as well on Sundays as on other days, the wharf, carriage, ship or boat of any carrier or other person who conveys goods for hire, or of the occupier of any factory magazine on shore, or of the importer of any explosive on or in which wharf, carriage, ship or boat he has reasonable cause to suppose an explosive to be for the purpose of or in course of conveyance, but so as not to unnecessarily obstruct the work or business of any such carrier, person, occupier or importer.

Any such officer if he find any offence being committed under this Act in any such wharf, carriage, ship or boat, or on any public wharf, may seize and detain or remove the said carriage, ship, or

¹ 51 & 52 Vict. c. 62.

² *Ante*, p. 74.

³ *Re Dry Docks Co.*, 39 Ch. D. 306; 59 L. T. 763.

⁴ *Richards v. Kidderminster*, 1896, 2 Ch. 212; 76 L. T. 283.

⁵ *Re Marriage & Co.*, 1896, 2 Ch. 663; 75 L. T. 169.

⁶ *Post*, p. 186.

⁷ 35 Geo. III. c. 101; *R. v. St. Olave's*, 3 Salk. 256.

⁸ *Johnson*, 2 *ib.* 485.

⁹ *R. v. Netherton*, Burr. 139.

¹⁰ *R. v. Honiton*, *ib.* 680. See *Brighton v. Strand* [1891], 2 Q. B. 156; 64 L. T. 722.

¹¹ 53 & 54 Vict. c. 5, ss. 13, 15, 21, 24; and see 54 & 55 Vict. c. 65, s. 25.

¹² 53 & 54 Vict. c. 5, s. 68.

¹³ Sect. 81. Guardians can sit with closed doors. *Purcell v. Sowler*, 2 C. P. D. 219. As to the powers of asylum visitors, see 53 & 54 Vict. c. 5, ss. 63-67, 79.

¹⁴ See *post*, p. 108.

boat, or the explosive, in such manner and with such precautions as appear to him to be necessary to remove any danger to the public, and may seize and detain the said explosive as if it were liable to forfeiture.

Any officer above-mentioned in this section, and any officer of police, or officer of the local authority who has reasonable cause to suppose that any offence against this Act is being committed in respect of any carriage (not being on a railway), or any boat conveying, loading, or unloading any explosives, and that the case is one of emergency, and that the delay in obtaining a warrant will be likely to endanger life, may stop and enter, inspect and examine such carriage or boat, and by detention or removal thereof or otherwise take such precautions as may be reasonably necessary for removing such danger in like manner as if such explosive were liable to forfeiture.

Every officer shall for the purpose of this section have the same powers and be in the same position as if he were authorised by a search warrant granted under this Act.¹

NUISANCE INSPECTOR.

The justices may by order authorise these officers to remove infected persons² or bodies³ from premises.

HIGHWAY SURVEYORS.

The power of highway surveyors for the recovery of highway rates is the same as that of overseers.⁴

Where a surveyor distrained on a person not liable, he was held answerable.⁵ But a rate not appealed from may be enforced.⁶

As to a certificate for diverting or stopping a highway, it must be confirmed by Quarter Sessions. It must state actual inspection by the justices⁷ together⁸ and consent of the owner.⁹ It must not delegate to the surveyor a discretion,¹⁰ and no part of any consecrated ground may be taken.¹¹

The justices grant licenses to gather stones¹² and materials,¹³ and also make orders to lop trees.¹⁴ Such an order does not confer power

¹ 38 & 39 Vict. c. 17, s. 75.

² *Ibid.*, c. 55, s. 124.

³ *Ibid.* s. 142.

⁴ 5 & 6 Will. IV. c. 50, s. 34. As to county bridges, see 55 Geo. III. c. 143, s. 1; 51 & 52 Vict. c. 41, s. 11.

⁵ *Freeman v. Read*, 32 L. J. M. C. 226. See 56 & 57 Vict. c. 73, s. 29.

⁶ *R. v. Oxford JJ.*, 18 *ib.* 222.

⁷ 5 & 6 Will. IV. c. 50, s. 85; *R. v. Surrey*, 1892, 1 Q. B. 867; 66 L. T. 578.

⁸ *R. v. Cambridge JJ.*, 4 A. & E. 111; *R. v. Kent JJ.*, 10 B. & C. 477.

⁹ *R. v. Kirk*, 1 B. & C. 21.

¹⁰ *R. v. Newmarket*, 19 L. J. M. C. 241.

¹¹ *Rector of St. John's v. Parishioners*, 2 Rob. 515.

¹² 5 & 6 Will. IV. c. 50, s. 51; *Alresford v. Scott*, 7 Q. B. D. 210.

¹³ Sect. 54. Certain places are excepted, but the materials may be carried over or through them: *Ramsden v. Yeates*, 6 Q. B. D. 583.

¹⁴ Sect. 65.

to top.¹ It must specify the extent to which the owner is required to cut the hedges,² but service on the occupier is sufficient.³

DISTRICT SURVEYORS.

The County Council may by order require a survey to be made of dangerous structures.⁴

LOCAL OFFICERS.

Justices may by order addressed to these officers, where infectious disease attributable to milk exists, empower them to inspect dairies, *i.e.*, places from which milk is supplied or in which it is kept for sale.⁵ Upon proper cause shown they may order the detention of a person in hospital,⁶ and in this case hospital officers or inspectors of police are to do necessary acts for enforcing the execution thereof.

The like powers are conferred on justices in the Metropolis, together with that of authorising an officer to enter underground dwellings for inspection.⁷

School Board officers may be authorised to enter premises where a child is suspected of being employed.⁸

¹ *Unwin v. Hanson*, 1891; 2 Q. B. 115; 65 L. T. 511.

² *Brook v. Jenney*, 2 Q. B. 265; 6 *ib.* 223.

³ *Woodward v. Billericay*, 11 Ch. D. 214.

⁴ 18 & 19 Vict. c. 122, s. 69.

⁵ 53 & 54 Vict. c. 34, s. 4.

⁶ Sect. 12.

⁷ 54 & 55 Vict. c. 76, ss. 67, 71, 97.

⁸ 39 & 40 Vict. c. 79, s. 29.

3. ORDERS OF LOCAL AUTHORITIES.

These orders¹ constitute the officer executing them the agent simply of the person or authority making them. In some cases this agency is express, in others it is to be implied from the circumstances, but the principle applicable to both is the same.²

Local Acts confer upon local authorities, sometimes called commissioners, powers to do certain things, and officers are directed to be appointed in pursuance of the Acts for the purpose of carrying the provisions of the statutes into execution.

Such officers are, while acting within the scope of the powers delegated to them, the agents of the body entrusted with the execution of the Act.³

A power in such an Act to seize wares, merchandise, etc., placed on footways or carriageways, and not removed when required by the authority, may be exercised without any previous proceedings before justices.⁴

Bye-laws.—Under the denomination of bye-laws are to be included the regulations which are made for the management of the revenue, or of the Post Office, to regulate traffic in the Metropolis, and in towns, by the Secretary of State in regard to the management of gaols, and the execution of the Acts relating to burial grounds, of the Local Government Board for the administration of the poor law, public health, and locomotives on highways, and those of local authorities.

The power to make such regulations is to be found in the statutes which confer the general powers on the different authorities, and if in making the bye-law, the power conferred, or the general law of the land is exceeded, it is void.⁵

A bye-law is a law made by some authority less than the sovereign or Parliament, in respect of a matter specially or impliedly

¹ Summonses issued by Courts or justices are not within the purview of the work. They are purely "administrative," as distinguished from "executive".

² As to officers casually employed, see *The Ratata*, 76 L. T. 224.

³ See *post*, p. 160. As to the imposition of a penalty under such an Act, see *Triggs v. Lester*, 30 J. P. 228.

⁴ *Brackley v. Battersea*, 23 Q. B. D.

486; 58 L. J. Q. B. 589. See *Attorney General v. Hooper*, 1893, 3 Ch. 480; 69 L. T. 340, and *Keep v. St. Mary*, 1894, 2 Q. B. 524; 76 L. T. 509.

⁵ As to time of coming into operation, see 52 & 53 Vict. c. 63, s. 36. Bye-laws must be construed strictly. See *Rolls v. Newell*, 25 Q. B. D. 335; 59 L. J. Q. B. 423; 63 L. T. 384; 39 W. R. 96.

referred to that authority, and not provided for by the general law of the land.¹

The necessary ingredients of its validity are:—

1. Consistent with and not repugnant to the general law.
2. Certain, *i.e.*, not ambiguous, and affording complete direction to those who are to obey it, and have definite penalties for its breach, which must not be excessive.² There may be power to mitigate the penalty.³

3. General in its application, *i.e.*, obligatory on all persons equally.

4. Not *ultra vires*, *i.e.*, within the scope of the authority delegated in the particular case.⁴

The Secretary of State is liable in trespass if a person be removed from one part of a prison to another in which he is not legally confined, under a general order made by him for the classification of prisoners which he had no legal authority to make.⁵ A bye-law respecting non-compliance with the requirements of a board is probably *ultra vires*.⁶ And so also is one giving power to such board to pull down buildings erected contrary to the bye-laws.⁷ And one made by a municipal corporation that parents should be liable to a penalty if they suffered a child to be selling articles in the street after a certain hour.⁸ And one made by a local board that a person should not cause or suffer any fowl to enter and remain in pleasure grounds.⁹

Where power was conferred on conservators to make bye-laws to regulate the use of nets, and a bye-law was made thereunder prohibiting during a certain season the use of any net except a trawl, it was held *ultra vires*.¹⁰

5. Reasonable.¹¹ In determining whether or no a bye-law is reasonable, it is material to consider the relation of its framers to the locality affected by it and the authority by whom it is sanctioned.¹²

Where a council made a bye-law under the Municipal Corporations Act, 1882, s. 23, that no person not being a member of Her Majesty's army or auxiliary forces, acting under the orders of his commanding officer, should sound or play upon any musical instrument in any of the streets of the borough on Sunday, it was held

¹ See Lumley, *Bye-laws*, p. 2; *London Shipowners v. Docks*, 1892, 3 Ch. 242.

² *Clarke v. Tucker*, 2 Ventr. 183.

³ *Piper v. Chappell*, 14 M. & W. 624.

⁴ As to a rule made by a delegated authority of the local authority, see *Huth v. Clarke*, 25 Q. B. D. 391; 59 L. J. M. C. 120; 63 L. T. 348; 38 W. R. 655.

⁵ *Cobbett v. Grey*, 4 Ex. 729; 19 L. J. Ex. 187.

⁶ *Young v. Edwards*, 33 L. J. M. C. 227. But see *Hall v. Nixon*, L. R. 10 Q. B. 152.

⁷ *Brown v. Holyhead*, 32 L. J. Ex. 25.

⁸ *Macdonald v. Lochrane*, 51 J. P. 629.

⁹ *Torquay v. Bridle*, 47 J. P. 183; and see *Everett v. Grapes*, 3 L. T. 669.

¹⁰ *Pidler v. Berry*, 59 L. T. 230; 53 J. P. 6; and see *Wood v. Venton*, 54 J. P. 662.

¹¹ See *Marshall v. Smith*, L. R. 8 C. P. 416. *Reay v. Gateshead*, 55 L. T. 92, and *Strike v. Collins*, *ib.* 182.

¹² Per Lord Hobhouse, *Slattery v. Naylor*, 13 App. Cas. 452; and see *Kruse v. Johnson*, 1898, 2 Q. B. 91.

unreasonable.¹ And so also, was one where a penalty was imposed on every person who in any street shall sound or play upon any musical or noisy instrument, or shall sing, recite or preach in any street without having previously obtained a licence in writing from the mayor.² And so was one made under the Public Health Act, that "no person shall commence the erection of a building in a new street unless and until the kerb of each footpath therein shall have been put on such a level as may be fixed and approved by the urban sanitary authority".³ And one prohibiting the keeping of swine within fifty feet of a dwelling-house,⁴ or requiring a new fee for the commencement of each new period of granting licences,⁵ or notice as to the erection of temporary structures,⁶ or prohibiting building on an open space in the rear of new buildings,⁷ or providing that no person in any street or public place or on land adjacent thereto shall sing or recite any profane or obscene song or ballad or use any profane or obscene language,⁸ or that persons carrying coal for sale shall re-weigh on request of a purchaser or any one on his behalf or an officer of the local authority.⁹

A bye-law may be good in part and bad in part, if the two parts be distinct.¹⁰ There is no dispensing power in the makers thereof.¹¹ But, where an Act confers a power to make any rules, regulations, or bye-laws, the power shall, unless the contrary intention appears, be construed as including a power exercisable in a like manner, and subject to like consent and conditions, if any, to rescind, revoke, amend or vary such rules, regulations and bye-laws.¹²

Confirmation by a superior authority does not render a bad bye-law valid. Where the Lord Chancellor was reported to have confirmed a bye-law it was said: "it is never the better for that, for that is done of course. If the orders be not good, let the parties look to that at their peril."¹³

Adulteration.—Any medical officer of health, inspector of nuisances or inspector of weights and measures, or any inspector of a market, or police constable . . . may procure any sample of food¹⁴ or drugs.¹⁵ They can only act within their district.¹⁶

¹ *Johnson v. Croydon*, 16 Q. B. D. 708.

² *Munro v. Watson*, 57 L. T. 366; 51 J. P. 660.

³ *Rudland v. Sunderland*, 33 W. R. 164. See *R. v. Newcastle-on-Tyne*, 60 L. T. 963; and *Burton v. Acton*, 51 J. P. 566.

⁴ *Heap v. Burnley Union*, 12 Q. B. D. 617; 53 L. J. M. C. 76; 32 W. R. 661.

⁵ *R. v. Commissioners of Sewers*, 22 L. T. 552.

⁶ *Fielding v. Rhyl Commissioners*, 3 C. P. D. 272.

⁷ *Quimby v. Liverpool*, 53 J. P. 213; *Calder Co. v. Pilling*, 14 M. & W. 76.

⁸ *Strickland v. Hayes*, 74 L. T. 137.

⁹ *Alty v. Farrell*, 1896, 1 Q. B. 636.

¹⁰ *The Fishermen of Faversham*, 8 T. R. 357.

¹¹ *Wortley v. Notts*, 21 L. T. 582.

¹² 52 & 53 Vict. c. 63, s. 32.

¹³ *Stationers' Co. v. Salisbury*, Comb. 222; *R. v. Wood*, 5 E. & B. 49.

¹⁴ *James v. Jones*, 1894, 1 Q. B. 304; 70 L. T. 351; *M'Hugh v. M'Grath*, 1894, Q. B. 1. 78.

¹⁵ 38 & 39 Vict. c. 63, s. 13. See *Hale v. Cole*, 55 J. P. 376. The purchase may take place in a shop or in streets, and public places of resort: 42 & 43 Vict. c. 30, s. 3.

¹⁶ *R. v. Smith*, 74 L. T. 348.

The officer purchasing shall, after the purchase, forthwith¹ notify to the seller or his agent his intention to have the same analysed by the public analyst,² and shall offer to divide the article into three parts to be then and there separated, and each part to be marked and sealed or fastened up in such manner as its nature will permit, and shall, if required to do so, proceed accordingly, and shall deliver one of the parts to the seller or his agent.³ The purchase may be by a servant.⁴

These officers may, without going through the form of purchase provided by the above Act, but otherwise acting in all respects in accordance with the provisions of the said Act as to dealing with samples, take for the purpose of analysis samples of any butter or substances purporting to be butter which are exposed for sale,⁵ and not marked "margarine".⁶

In the case of importation or manufacture in the United Kingdom they may procure samples for analysis if they shall have reason to believe that the provisions of the Act are infringed by its conveyance not consigned as margarine, and examine and take samples from any package.⁷

They may also procure at the place of delivery any sample of any milk in the course of delivery to the purchaser or consignee in pursuance of any contract.⁸ Where there was an agreement to supply milk at H, H was held the place of delivery although the purchasers had paid the carriage from the place of supply.⁹ The whole sample need not be submitted for analysis.¹⁰

No notification to the seller as above-mentioned is necessary in the case of milk samples.¹¹

Diseases of Animals.—Inspectors employed by the local authority have the same powers as constables have under the Act.¹²

They may at any time on giving reasons in writing, if required, enter any land, dairy or cowshed to which the Act applies, or milk-shop, or stores, or other building or place where they have reasonable grounds to suppose: (a) disease exists or has within fifty-six days existed; (b) the carcase of a diseased or suspected animal is or has been kept, buried, destroyed or otherwise disposed of; or (c) there

¹ Two minutes later is forthwith: *Somerset v. Miller*, 54 J. P. 614.

² See *Weeker v. Webb*, 51 J. P. 661; *Barnes v. Chipp*, 47 L. J. M. C. 85; 3 Ex. D. 176; 38 L. T. 570; 26 W. R. 635.

³ 38 & 39 Vict. c. 63, s. 14.

⁴ *Garforth v. Esam*, 56 J. P. 521. [*Macaulay v. McKirdy*, 20 R. J. C. 58.]

⁵ These words must be construed strictly: *Crane v. Lawrence*, 25 Q. B. D. 152; 59 L. J. M. C. 110; 63 L. T. 197; 38 W. R. 620; but the margarine need not be uncovered: *Wheat v. Brown*, 1892, 1 Q. B. 418; 66 L. T. 464.

⁶ 50 & 51 Vict. c. 29, s. 10.

⁷ Sect. 8.

⁸ 42 & 43 Vict. c. 30, s. 3.

⁹ *Filshie v. Evington*, 1892, 2 Q. B. 200; 66 L. T. 199.

¹⁰ *Rolfe v. Thompson*, 1892, 2 Q. B. 196; 67 L. T. 295.

¹¹ *Rouch v. Hall*, 6 Q. B. D. 17; 50 L. J. M. C. 6; 44 L. T. 183; 29 W. R. 304; *Enniskillen v. Hilliard*, 14 Ex. Ir. 214. [*Morton v. Fyfe*, 24 R. J. C. 10.]

¹² 57 & 58 Vict. c. 57, ss. 43, 44; and see *post*, p. 107.

is anything in respect whereof there has been a failure to comply with the provisions of the Act, an order, or a regulation of the local authority.

As to slaughter-houses, see 7 & 8 Vict. c. 87, s. 4, cited, *post*.¹

Explosives.—Any officer authorised by the local authority may, on producing, if demanded, either a copy of his authority . . . or some other sufficient evidence, require the occupier of any store (not subject to the inspector of mines), or any registered premises, or any small firework factory, to shew him every or any place and all or any of the receptacles in which any explosive or ingredient of an explosive or regulated by this Act,² that is in his possession is kept, and to give him samples of such explosive ingredient or substance, or of any substance which the officer believes to be an explosive, or such ingredient or substance.³

He may also purchase any petroleum from any dealer in it, and on producing a copy of his appointment, or other sufficient authority, require such dealer to shew him every or any place, and all or any of the vessels in which any petroleum in his possession is kept, and give him samples of such petroleum on payment of the value thereof.⁴

As to the power of officers of the local authority to arrest for offences, see *post*.⁵

Highways.—The surveyors are the officers of the local authority.⁶ The powers generally are as follows:—

The surveyor may make a road through the grounds adjoining any ruinous or narrow part of the highway (not being the site or ground whereon any house stands, nor being a garden, lawn, yard, court, park, paddock, plantation, planted walk or avenue to any house or inclosed ground set apart for building ground, or as a nursery for trees) to be used as a highway while the old road is repairing or widening.⁷

Obstructions from snow or the falling of banks are to be removed by the surveyor within twenty-four hours after notice from a justice.⁸

Where the ratepayers convey the material to repair it is to be at such times and places as the surveyor may direct (spring, seed-time and harvest excepted).⁹

If the surveyor shall make pits for getting materials he shall forthwith cause the same to be sufficiently fenced off while the pit continues open, and within three days after opening where no

¹ Page 117.

² See *post*, p. 108.

³ 38 & 39 Vict. c. 17, s. 69.

⁴ 34 & 35 Vict. c. 105, s. 11; and see *Coleman v. Goldsmith*, 43 J. P. 718.

⁵ Page 107.

⁶ 38 & 39 Vict. c. 55, s. 144; and see as to district councils, 56 & 57 Vict. c. 73, ss. 21, 25, 26.

⁷ 5 & 6 Will. IV., c. 50, s. 25. This Act does not apply to the Metropolis.

⁸ Sect. 26, and as to nuisances, see s. 73; 56 & 57 Vict. c. 32, s. 3; and *Mill v. Hawker*, L. R. 10 Ex. 62; 44 L. J. Ex. 49; 33 L. T. 177; 39 J. P. 195; 33 W. R. 346. There is no obligation to remove them; *Morgan v. Leech*, 10 M. & W. 558; 12 L. J. M. C. 4.

⁹ Sect. 35.

materials found cause the same to be filled up and covered with the turf taken out of the same, and where materials are found, within fourteen days after sufficient materials are obtained, cause the same to be filled up, if so required by the owner, within twenty-one days after appointment. Pits not likely to be useful to be filled up, and those likely to be useful to be sufficiently fenced.¹ He must not allow materials in heaps to remain at night to the danger of passengers.² But he is apparently not liable under this section, nor at common law if a road under repair be left without fence or light.³ He cannot dig for materials whereby any bridge, well, building, dam, highway, occupation road, ford, mines, tin works, or other works may be damaged,⁴ but gravel, stone, etc., may be taken from waste lands.⁵

He may make, scour, cleanse and keep open all ditches, gutters, drains, or water-courses, and also make and lay such tracks, tunnels, plats or bridges as he shall deem necessary in and through any lands or grounds adjoining. The damage in such case payable to the owner to be settled by a justice.⁶

Tender of satisfaction for damage done is not a condition precedent to entry.⁷

He may take away and remove any encroachment.⁸ But the defendant must first be summoned.⁹ This does not apply to buildings not actually on the highway,¹⁰ but it does apply to any erection which makes the highway less commodious.¹¹

These officers may inspect platforms erected on public occasions under the Public Health Amendment Act, where that Act is adopted,¹² and may enter premises for the purpose of surveying and valuing which the local authority are entitled to take under the Housing of the Working Classes Act, at all reasonable times by day on giving twenty-four hours' notice.¹³

Public Health.—The local authority may order the following things to be done, namely:—

The carrying of sewers and water-mains through private lands,

¹ Sect. 55. Penalty for default not to exceed £10.

² Sect. 56. A penalty not exceeding £5. See *Hardcastle v. Beilby*, 1892, 1 Q. B. 709.

³ *Taylor v. Greenhalgh*, L. R. 9 Q. B. 487. See *Pendlebury v. Greenhalgh*, 1 Q. B. D. 36; 45 L. J. Q. B. 3; but see *Fearnley v. Ormsby*, L. R. 4 C. P. D. 136.

⁴ Sect. 57. Penalty £5, and civil liability to remain. See *Peters v. Clarkson*, 13 L. J. M. C. 153; 7 M. & G. 548; 8 Sc. N. R. 384.

⁵ Sect. 51.

⁶ Sect. 67.

⁷ *Peters v. Clarkson*, *ubi sup.*

⁸ Sect. 69.

⁹ *Cooper v. Wandsworth Board*, *ante*, p. 17.

¹⁰ *Chapman v. Robinson*, 1 E. & E. 25; 28 L. J. M. C. 30; 7 W. R. 12.

¹¹ *Denny v. Thwaites*, L. R. 2 Ex. D. 21; 46 L. J. M. C. 141; 35 L. T. 628; *Evans v. Oakley*, 1 C. & K. 125; *Chapman v. Robinson*, 28 L. J. M. C. 30.

¹² 53 & 54 Vict. c. 59, s. 37.

¹³ *Ibid.* c. 70, s. 77. The liability of the local authority is no greater than that of the surveyor was; *Gibson v. Preston*, L. R. 5 Q. B. 218; 39 L. J. Q. B. 131; 22 L. T. 293; *Parsons v. Bethnal Green*, L. R. 3 C. P. 56; 37 L. J. C. P. 62; 17 L. T. 211; *Cowley v. Newmarket*, 1892, A. C. 345; 67 L. T. 484.

if, on the report of the surveyor, it is by him deemed necessary.¹ "Necessary" means for the efficient discharge of the duty in the way most for the public benefit.² They need not purchase the lands,³ but a sewer must not amount to a nuisance.⁴ They may perhaps place ventilating shafts to drains against private buildings,⁵ enforce the drainage of undrained houses,⁶ enforce privy accommodation,⁷ and examine the same on complaint.⁸ Drains cannot be disconnected by the local authority unless the connection has been made contrary to the Act.⁹ They may sewer, level, pave, metal, flag, channel, make good and light, after notice not attended to, and charge expense on the owner or occupier, fronting, adjoining or abutting streets, not being highways, repairable by the inhabitants.¹⁰ But an incumbent or minister of a church, etc., exempt from poor-rates, is not so liable.¹¹ This exemption does not apply to trustees of a chapel and buildings not wholly devoted to religious purposes.¹²

They may purify houses after certificate of the medical officer that they are unwholesome and refusal to purify on the part of the occupier.¹³

And remove filth on the certificate of the inspector.¹⁴

And remove infected persons¹⁵ and destroy the bedding,¹⁶ or remove infants improperly kept at premises where they are received.¹⁷

And remove gas and water pipes where the owner refuses to comply with notice,¹⁸ and compel persons to have a proper water supply.¹⁹

This latter power is not repealed by the Public Health Water Act.²⁰

They may slaughter diseased cattle,²¹ and prohibit their landing.²² Under the order of justices—

¹ 38 & 39 Vict. c. 55, ss. 16, 54.

² *Lewis v. Weston*, 40 Ch. D. 55.

³ *Roderick v. Aston*, 5 Ch. D. 328; 46 L. J. Ch. 804; 36 L. T. 328.

⁴ *Lamacraft v. St. Thomas*, 42 L. T. 365; *Hill v. Wallasey*, 1894, 1 Ch. 133.

⁵ See *Hopkins v. Smethwick Local Board*, 24 Q. B. D. 712; 38 & 39 Vict. c. 55, s. 19, and *Swanston v. Twickenham*, 11 Ch. D. 848.

⁶ Sect. 23.

⁷ Sect. 36. *Wood v. Widnes*, 1898, 1 Q. B. 463.

⁸ Sect. 41. *Lancaster v. Barnes*, 1898, 1 Q. B. 855.

⁹ *Ainsley v. Kirkheaton*, 55 J. P. 230.

¹⁰ 38 & 39 Vict. c. 55, ss. 4, 150, 257, 258; *Walthamstow v. Staines*, 1891, 2 Ch. 612. See *R. v. Goole*, 39 W. R. 608; *Hornsey v. Davis*, 1893, 1 Q. B. 756.

¹¹ Sect. 151.

¹² *Brewis v. Hornsey*, 64 L. T. 288; 55 J. P. 389. See *Re Bettesworth*, 37 Ch. D. 535; 58 L. T. 796; *Bowditch v. Wakefield*, L. R. 6 Q. B. 567; 25 L. T. 88; *Tottenham v. Rowell*, 15 Ch. D. 378; 43 L. T. 616.

¹³ 38 & 39 Vict. c. 55, ss. 46, 94, 120; and 53 & 54 Vict. c. 34, ss. 5 and 6. Entry under the latter Act must be between 10 A.M. and 6 P.M., see s. 17; as to workshops, see 54 & 55 Vict. c. 75, s. 4.

¹⁴ 38 & 39 Vict. c. 55, ss. 49, 62.

¹⁵ Sect. 124.

¹⁶ Sect. 121.

¹⁷ 60 & 61 Vict. c. 57, s. 6.

¹⁸ Sect. 153.

¹⁹ Sect. 62.

²⁰ *Colne Valley v. Treharne*, 50 L. T. 617; 48 J. P. 279.

²¹ 57 & 58 Vict. c. 57, ss. 7, 19.

²² Sects. 24-27.

They may remove dangerous buildings¹ or those erected contrary to bye-laws.² The last-mentioned power cannot be exercised without giving the owner an opportunity of shewing cause against it.³

And enter to abate nuisances⁴ after disobedience of order of abatement.⁵

They may also close wells,⁶ cellars,⁷ and close or demolish houses unfit for habitation,⁸ and destroy unsound meat.⁹

Where a person is not in default and his property is damaged or destroyed he may obtain compensation.¹⁰

Factories may be examined in order to ascertain whether there is proper precaution against fire.¹¹

The officers of the board are to be allowed to inspect premises where infectious disease has occurred, between 10 A.M. and 6 P.M., on producing their authority,¹² if the authority has adopted the amending Act,¹³ and common lodging-houses at all times.¹⁴

As to nuisances they must be admitted into any premises for the purpose of examining as to any nuisance thereon or of enforcing the provisions of any Act,¹⁵ requiring fireplaces and furnaces to consume their own smoke, at any time between 9 A.M. and 6 P.M., or in case of nuisance arising from business, at any time when business carried on.¹⁶ Also where a nuisance exists or an order of abatement or prohibition has been made, between the hours aforesaid until the nuisance is abated or the works completed, and such order of abatement or prohibition not having been complied with, they must be admitted in order to abate the same.¹⁷

A nuisance is any premises in such a state as to be a nuisance, pools, ditches, etc., so kept, or animals, or accumulations or deposits, or houses overcrowded, factories, workshops, etc., not cleanly kept, or ventilated or overcrowded, or fireplaces and furnaces not consuming their own smoke, or chimneys sending forth quantities of black smoke.¹⁸

¹ 38 & 39 Vict. c. 55, s. 26.

² Sects. 155 and 158, and 10 & 11 Vict. c. 34, s. 78; 51 & 52 Vict. c. 52, s. 3.

³ *Hopkins v. Smethwick*, *ubi sup.* See *Baker v. Portsmouth*, 47 L. J. Ex. 223; 3 Ex. D. 10; 37 L. T. 822; 26 W. R. 309; *Thompson v. Failsworth*, 46 J. P. 21; *Slee v. Bradford*, 8 L. T. 491; *Jaggard v. Doncaster*, 54 J. P. 438.

⁴ 38 & 39 Vict. c. 55, ss. 49, 102.

⁵ *Tinkler v. Wandsworth*, 27 L. J. Ch. 342; 2 De G. & J. 261. The definition of nuisance is practically identical with that in the Metropolis Act. See *post*.

⁶ 38 & 39 Vict. c. 55, s. 70.

⁷ Sect. 75.

⁸ Sects. 97, 109, 110; 48 & 49 Vict.

c. 35, s. 2; 53 & 54 Vict. c. 70, s. 34.

⁹ 38 & 39 Vict. c. 55, s. 117.

¹⁰ Sects. 155, 308.

¹¹ 54 & 55 Vict. c. 75, s. 7.

¹² 53 & 54 Vict. c. 34, s. 6.

¹³ Sects. 3 and 21.

¹⁴ 38 & 39 Vict. c. 55, s. 85. See *Langdon v. Broadbent*, 37 L. T. 434; and *Booth v. Ferrett*, *post*, p. 104.

¹⁵ 10 & 11 Vict. c. 34, s. 108.

¹⁶ 38 & 39 Vict. c. 55, s. 102. Under s. 91 it was held an accumulation may be a nuisance though not injurious to health: *Bishop Auckland v. Iron Co.*, 10 Q. B. D. 138; 54 L. J. M. C. 38; 48 L. T. 223; 31 W. R. 288.

¹⁷ *Ibid.*, s. 102.

¹⁸ *Ibid.*, s. 91.

These powers are extended to dairies, cow-sheds and milk-shops,¹ and apply also to the execution of regulations issued by the Local Government Board on the breaking out of epidemic diseases.²

Under the Public Health Amendment Act, if adopted,³ they may enter premises to see whether chemical refuse or steam be turned into sewers,⁴ or to sweep courts and passages, in which case the expense may be charged on the occupier.⁵ They may also, on the representation of four householders, inspect buildings unfit for habitation.⁶

Any medical officer of health or inspector of nuisances may at all reasonable times⁷ inspect and examine any animal,⁸ carcase, meat, poultry, game, flesh, fruit, fish, vegetables, corn, bread, flour, or milk exposed for sale or deposited in any place⁹ for the purpose of sale or of preparation for sale,¹⁰ and intended for the food of man; . . . and if any such animal, etc., appears to be diseased, unsound, unwholesome, or unfit for food, he may seize¹¹ and carry away the same in order to have the same dealt with by a justice.¹²

This power is extended to horse-flesh intended for sale for food, and exposed for sale in any place not advertised for the sale thereof.¹³

The medical officer has all the powers of entry and inspection of bakehouses, as an inspector under the Factory Act.¹⁴

The local officer may remove persons offending against any bye-laws made under the Baths and Wash-houses Act,¹⁵ and refuse admittance to any person who may have been convicted of an offence against the bye-laws or public decency.¹⁶

Any inspector or other person duly appointed and authorised, in writing, by or on behalf of the local authority shall from time to time inspect any infants referred to in any notice given under the Infants Life Protection Act, and the premises in which they are retained or received in order to satisfy himself as to the proper maintenance of such infants or to give any necessary advice or directions as to such maintenance.¹⁷

¹ 49 & 50 Vict. c. 32, s. 9.

² 38 & 39 Vict. c. 55, s. 137.

³ 53 & 54 Vict. c. 59, s. 3.

⁴ Sect. 17.

⁵ Sect. 27.

⁶ 53 & 54 Vict. c. 70, s. 31.

⁷ This was held not to extend to Sunday afternoon where a man lived half a mile from his shop: *Small v. Bickley*, 32 L. T. 726.

⁸ Includes live animals: *Moody v. Leach*, 44 J. P. 459.

⁹ This applies to a yard belonging to a shop: *Young v. Gutteridge*, L. R. 4 Q. B. 166; and to meat passing from a slaughter-house to a factory of preserved meats: *Daly v. Webb*, 4 C. L. R. 309; 18 W. R. 631; and see *Mallinson v. Carr* [1891], 1 Q. B. 48; 39 W. R. 270.

¹⁰ But not after sale: *Vinter v. Hind*,

10 Q. B. D. 63; 52 L. J. M. C. 93; 48 L. T. 359; 31 W. R. 198.

¹¹ No notice is necessary: *White v. Redfern*, 5 Q. B. D. 15; 49 L. J. M. C. 19; 41 L. T. 524; 28 W. R. 168.

¹² 38 & 39 Vict. c. 55, s. 116. This section is by the Public Health Amendment Act, where adopted, extended to all articles of food: 53 & 54 Vict. c. 59, s. 28.

¹³ 52 & 53 Vict. c. 11, s. 3.

¹⁴ 46 & 47 Vict. c. 53, s. 17; and see *post*, p. 122.

¹⁵ 9 & 10 Vict. c. 74; 10 & 11 Vict. c. 61; 41 & 42 Vict. c. 14, s. 10; 38 & 39 Vict. c. 55.

¹⁶ 41 & 42 Vict. c. 14, s. 11. As to museums and gymnasiums, see 54 & 55 Vict. c. 22, ss. 7 and 8.

¹⁷ 60 & 61 Vict. c. 57, s. 8.

The inspector of provisions may seize unwholesome meat or provisions in the market or fair, and carry the same before a justice,¹ and may arrest an unknown offender.² He may enter any building erected for slaughtering cattle, and seize and carry away such as appears unfit for food.³

On refusal to pay toll⁴ he may distrain all or any of the cattle or other articles in respect of which it is payable belonging to the person liable to pay.⁵

He may also at all reasonable times weigh or measure all goods sold, offered or exposed for sale.⁶

Under the Public Health Amendment Act, when adopted, the local authority may close parks and pleasure grounds for twelve days in the year, not more than four being consecutive.⁷

The inspector of nuisances, officer of health, or any other officer appointed for that purpose, may at all reasonable times, with or without assistants, enter into and inspect buildings or places kept or used for the sale of butcher's meat or for slaughtering cattle, and examine whether any cattle, or the carcase of any such cattle, is deposited there, and, if it appear unfit for food, seize and carry the same before a justice.⁸ If a person offer for sale any cattle, etc., at such slaughter-house, and be unable or refuse to give an account of how he came by it, the officer may seize the cattle and give the person into custody.⁹

Where any person duly authorised by a sanitary authority (or by a justice) has reasonable cause to suppose either that there is any contravention of the Labourers' Dwellings Act, or of any bye-law made thereunder, in any tent, van, shed, or similar structure, or any person suffering therein from a dangerous infectious disorder, he may, on producing (if demanded) his authority or other sufficient evidence, enter by day¹⁰ such tent, etc., and examine the same and every part thereof.¹¹

A similar power exists as to canal boats with power to detain the boat so long as may be necessary.¹²

The sanitary authority and their officers shall have all such powers, as to entry and inspection for the purposes of purification of workshops, as an inspector of factories has generally as regards factories.¹³

The definition of nuisance in the Metropolitan Act is practically identical with that in the Public Health Act, with the additions of

¹ 10 & 11 Vict. c. 14, s. 15.

² Sect. 154.

³ Sect. 20.

⁴ These must be set up conspicuously: s. 41.

⁵ Sect. 38. *Torquay v. Burridge*, 48 J. P. 71; *Woolwich v. Gardner*, 1895, 2 Q. B. 497; 73 L. T. 218.

⁶ 41 & 42 Vict. c. 49, s. 86.

⁷ 53 & 54 Vict. c. 59, s. 44.

⁸ 10 & 11 Vict. c. 34, s. 131.

⁹ 26 Geo. III. c. 71, s. 7.

¹⁰ Between 6 A.M. and 9 P.M.

¹¹ 48 & 49 Vict. c. 72, s. 9. This does not apply to tents of Her Majesty.

¹² 40 & 41 Vict. c. 60, s. 5.

¹³ 54 & 55 Vict. c. 75, s. 3; and see *post*, p. 122. As to dyers, see 23 Geo. III. c. 15.

(1) absence from premises of water fittings, and (2) tents and vans kept so as to be a nuisance.¹

The sanitary authority may sell manure, etc., collected by them either by public auction or otherwise.²

Their right of entry is to be subject in all cases to the production of a written document shewing such right.³ They may enter from time to time any premises (a) to examine any nuisance liable to be dealt with under the Act at any hour by day; or where nuisance arises from a business, when the business is carried on (b) where a nuisance is ascertained to exist, or order made, then at any such hour as aforesaid until abated or the works completed; (c) where order not complied with or infringed, then at all reasonable hours, including all hours in which business is in progress or usually carried on.⁴ They may enter slaughter-houses or knackers' yards at any hour by day, or when business is in progress, to examine whether there is any contravention of the Act or bye-laws made thereunder;⁵ and trade works or steam vessels, to enforce the Act as to smoke consumption;⁶ and after notice not complied with, they may lime-wash, cleanse or purify workshops and bakehouses.⁷ The County Council have the like power of entry for the execution of orders and regulations as to dairies.⁸ The sanitary authority must remove refuse free, and trade refuse on reasonable remuneration;⁹ and obnoxious matter may be removed by them on the requisition of the inspector, and taken possession of after notice not complied with.¹⁰ They may also enter and execute works as to water-closets¹¹ after such notice. But this power must only be exercised with reference to each particular case.¹²

And examine water-closets; and for that purpose, or to ascertain the course of a drain, they may at all reasonable times by day, after twenty-four hours' notice on the occupier or owner, or in emergency without notice, enter and cause the ground to be opened, doing as little damage as possible. If in good order, the authority to pay the expenses, otherwise not.¹³ And where water-closets are improperly made or altered, after notice not complied with, enter and make necessary alterations.¹⁴

They may cleanse and cover offensive ditches, damage to mills, etc., being made good.¹⁵

In case of certain infectious diseases, viz., small-pox, cholera, diphtheria, membranous croup, erysipelas, scarlatina, scarlet fever,

¹ 54 & 55 Vict. c. 76, ss. 2, 23 and 95.

² Sect. 9.

³ Sect. 115.

⁴ Sect. 10.

⁵ Sect. 20.

⁶ Sect. 23.

⁷ Sects. 25, 26.

⁸ Sect. 28.

⁹ Sect. 29. *Saunders v. Holborn*,

1895, 1 Q. B. 64; 73 L. T. 519.

¹⁰ Sect. 35.

¹¹ Sect. 37.

¹² *Tinkler v. Wandsworth*, 27 L. J. Ch. 342; 30 L. T. 146. See *St. Luke v. Lewis*, 31 L. J. M. C. 73; 5 L. T. 608; and *Sherborne v. Boyle*, 46 J. P. 675.

¹³ Sect. 40.

¹⁴ Sect. 41.

¹⁵ Sect. 43.

typhus, typhoid, enteric, relapsing, continual or puerperal fever,¹ they may order the destruction of unfit bedding or disinfect bedding, paying compensation for damage; and after notice not complied with, cleanse and disinfect infected premises, entering by day, temporary shelter to be provided for families.² And in case of epidemics, they may enter any premises or vessel for the purpose of executing or superintending the execution of regulations.³

Under order of a justice—

Of abatement, prohibition or closing not complied with, they may enter the premises and do what is necessary in execution thereof.⁴ In case of appeal, if immediate abatement required, if appeal be successful, the damage is to be made good.⁵

They may close wells,⁶ and remove persons suffering from any dangerous infectious disorder to a hospital, where they are without proper lodging or accommodation, or lodged in a tent or van, or on board a vessel.⁷

And cleanse underground dwellings.⁸

And remove dead bodies to mortuaries.⁹

The local authority may take down buildings beyond the general line.¹⁰ Where this section was found inconsistent with a special Act, it was held the justice had no jurisdiction to make the order.¹¹ And in any case a verbal order is insufficient.¹²

There can be no offence until the architect has determined the general line.¹³ A building in advance of it when determined, commenced before cannot be completed.¹⁴

As to officers of the authority, the power to inspect food is practically identical with that under the Public Health Act.¹⁵

And the power as to tents and vans is the same.¹⁶

They may enter underground rooms for inspection at any hour by day.¹⁷

Any surveyor or inspector, or such other person as the council may appoint, may inspect any drain or other works within the parish or district of such council, and for that purpose at all reasonable times in the daytime after twenty-four hours' notice to the occupier; or in case of emergency, without such notice, may enter upon any

¹ This list may be extended by order of the sanitary authority. Sect. 55.

² Sects. 59, 60, 61.

³ Sect. 82.

⁴ Sects. 5, 8.

⁵ Sect. 6.

⁶ Sect. 54.

⁷ Sects. 66, 67.

⁸ Sect. 96.

⁹ Sect. 89.

¹⁰ 25 & 26 Vict. c. 102, s. 75.

¹¹ *City Ry. v. County Council*, 1891, 2 Q. B. 573.

¹² *Barlow v. Kensington*, 11 App.

Cas. 257; 55 L. J. Ch. 680; 55 L. T. 221; 34 W. R. 521; *Allen v. London C. C.*, 1895, 2 Q. B. 587; 73 L. T. 101.

¹³ *Worley v. Kensington*, 1892, 2 Ch. 404; 66 L. T. 747.

¹⁴ *Wendon v. London C. C.*, 1894, 1 Q. B. 227. See *Attorney-General v. Hatch*, 1893, 3 Ch. 36; 69 L. T. 469.

¹⁵ 54 & 55 Vict. c. 76, s. 47; see *ante*, p. 100; *Barlow v. Terrett*, 1891, 2 Q. B. 107; 39 W. R. 640; *R. v. Dennis*, 1894, 2 Q. B. 458; 71 L. T. 436.

¹⁶ Sect. 95; see *ante*, p. 101.

¹⁷ Sect. 97.

premises, and cause the ground to be opened in any place they think fit, doing as little damage as possible.¹

Common lodging-houses are open to inspection at all times.² But such a house, maintained as a charitable institution, is not within the Act.³

In case of fire, the officer in charge of the fire brigade may remove persons who interfere with the operations, and take all measures expedient for the protection of life and property, with power to break into or through, or take possession of, or pull down, any premises to put an end to the fire, doing as little damage as possible, and to shut off mains in any district for a greater supply of water.⁴ He need not take possession of premises.⁵ The brigade must render assistance to the salvage corps, and hand over property saved to them.⁶

Weights and Measures.—The proper officer of the local authority may at all reasonable times enter any building or other place in which coal is sold or kept, or exposed for sale, and stop any vehicle carrying any coal for sale or delivery, and may test any weights and weighing instruments found therein, and weigh any load, sack or other less quantity in any such place or vehicle which is in course of delivery to the purchaser.⁷

¹ 18 & 19 Vict. c. 120, s. 82; 54 & 55 Vict. c. 76, s. 142.

² 14 & 15 Vict. c. 28, s. 12.

³ *Booth v. Ferrett*, 25 Q. B. D. 87; 59 L. J. M. C. 136; 63 L. T. 346; 38 W. R. 718.

⁴ 28 & 29 Vict. c. 90, s. 12. Damage done is deemed damage by fire within the meaning of any policy.

⁵ *Joyce v. Metropolitan Board of Works*, 44 L. T. 811.

⁶ Sect. 29.

⁷ 52 & 53 Vict. c. 21, s. 29. See *Roberts v. Woodward*, 25 Q. B. D. 412; 63 L. T. 200; and as to constables performing such duty, *R. v. Kesteven*, 58 L. J. M. C. 157; 61 L. T. 51.

2. INHERENT POWERS.

CONSTABLES.

CONSTABLES may be required to assist other officers in the execution of certain warrants of this class. But the assistance is here limited apparently to the protection of such other officers who may be resisted in the exercise of their duty, and can be given only in the daytime, which excludes night and twilight.¹

Arrest.—The inherent power of a constable to arrest here is confined to cases of breach of the peace and those misdemeanours detailed below. A person cannot be arrested on suspicion of having committed a misdemeanour.²

In breaches of the peace arrest on Sunday is permissible.³

If there be any disorderly drinking or noise at an unseasonable time of the night, especially in inns, a constable demanding entrance and being refused may break open the doors to see and suppress the disorder.⁴

The jurisdiction of justices in these cases is limited to six months from the commission of the offence,⁵ and time runs as soon as the defendant's default or liability is complete.⁶

Under the Gaming, Highway and Vagrant Acts, any person may arrest, which includes the case of a constable out of his jurisdiction.⁷

Any person making any disturbance in any church, chapel or churchyard may be immediately apprehended by any constable and taken before a justice.⁸ The disturbance must be wilful and intentional,⁹ and may be committed by a clergyman.¹⁰

As was above stated, the constable may arrest for a breach of the peace committed in his view. But it must be actual,¹¹ and he may arrest as soon after as he conveniently can, so as it come within the

¹ *Attorney-General v. Kissane*, 32 L. J. M. C. 25; *Reeves v. Yeates*, 31 *ib.* R. I. 220, is, it is submitted based on an excessive view of the royal authority.

See *American Co. v. Hendry*, 5 R. 331. ⁷ See *ante*, p. 35.

² *Matthews v. Biddulph*, 11 L. J. M. C. 18; *Bowditch v. Balchin*, 5 Ex. ⁸ 23 & 24 Vict. c. 32, s. 3; 43 & 44 Vict. c. 41, s. 8. [This last not applicable to I.]

³ 29 Car. II. c. 7, s. 6. ⁹ *Williams v. Glenister*, 2 B. & C. 699; and see *post*, p. 128.

⁴ 2 Hale P. C. 75.

⁵ 11 & 12 Vict. c. 43, s. 11.

⁶ *Labalmondiere v. Addison*, 28 L.

¹⁰ *Vallancey v. Fletcher*, 1897, 1 Q. B. 265.

¹¹ *Wheeler v. Whiting*, 9 C. & P. 262.

expression "recently".¹ The disturbing of a meeting of justices is apparently a breach.² The continued ringing of a door-bell without cause or excuse is not itself such a breach, but it is eminently calculated to lead to it, and if it is done and persisted in, in view of the constable, he may arrest.³

The disturbance and annoyance of a public meeting by putting questions to the speakers, making observations on their statements, and saying "that is a lie," is not a breach of the peace.⁴ Nor is using loud words in the street,⁵ and arrest in such case is unjustifiable.⁶ But if a constable be engaged in preventing a breach of the peace, and a person stands in his way to hinder his doing so, he may arrest such person.⁷

A constable may on his own view arrest offenders against the Cruelty to Animals Act. The offences are: cruelly beat, ill-treat, over-drive, abuse, or torture, or cause this to be done, to any animal.⁸ Animal means horse, mare, gelding, bull, ox, cow, heifer, steer, calf, mule, ass, sheep, lamb, hog, pig, sow, goat, dog, cat, or any other domestic animal,⁹ whether a quadruped or not.¹⁰ Cutting cocks' combs for fighting or winning prizes is within the section,¹¹ and so is dishorning.¹² But operating for the purpose of improving an animal is not.¹³ Nor is mere passive cruelty by not killing a wounded animal,¹⁴ unless there be evidence of its being kept in such a manner as to amount to torturing.¹⁵

Keeping, or using, or acting in the management of any place for the purpose of fighting or baiting any animal,¹⁶ or aiding thereat. This offence must be committed in a place usually kept for the purpose.¹⁷ Hunting rabbits in an enclosed area of four acres is not within the section.¹⁸

¹ *R. v. Light*, D. & B. C. C. 232; 27 L. J. M. C. 1.

² Stone, 23rd ed., 645.

³ *Grant v. Moser*, 5 M. & G. 123; 6 Sc. N. R. 466.

⁴ *Wooding v. Oxley*, 9 C. & P. 1.

⁵ *Hardy v. Murphy*, 1 Esp. 294.

⁶ *R. v. Lockley*, 4 F. & F. 155.

⁷ *Levy v. Edwards*, 1 C. & P. 40; and see *Lewis v. Arnold*, 4 ib. 354.

⁸ 12 & 13 Vict. c. 92, s. 13 (2). There is no offence if defendant did not know of the pain caused: *Elliott v. Osborne*, 55 J. P. 277.

⁹ Sect. 29.

¹⁰ 17 & 18 Vict. c. 60, s. 3. It includes cocks, *Bridge v. Parsons*, 32 L. J. M. C. 95; 7 L. T. 784; 11 W. R. 424; and linnets, *Colam v. Paget*, 53 L. J. M. C. 64; 12 Q. B. D. 66; 32 W. R. 289; but not young unacclimatised parrots, *Swan v. Sanders*, 50 L. J. M. C. 67; 44 L. T. 424; 29 W. R. 538; nor wild rabbits kept a few days, *Aplin v. Porritt*, 1893, 2 Q. B. 57; nor lions in

a cage, *Harper v. Marcks*, 1894, 2 Q. B. 319; nor seagulls, *Yates v. Higgins*, 1896, 1 Q. B. 166.

¹¹ *Murphy v. Manning*, 2 Ex. D. 307; 46 L. J. M. C. 211; 36 L. T. 592; 25 W. R. 540.

¹² *Ford v. Wiley*, 37 W. R. 709; 58 L. J. M. C. 145. See *R. v. McDonagh*, 28 L. R. I. 204. [*Renton*, 15 R. J. C. 84.]

¹³ *Lewis v. Femor*, 18 Q. B. D. 532; 56 L. J. M. C. 45; 56 L. T. 236; 35 W. R. 378.

¹⁴ *Powell v. Knights*, 38 L. T. 607; 26 W. R. 721.

¹⁵ *Everitt v. Davies*, 38 L. T. 360; 42 J. P. 248; 26 W. R. 332.

¹⁶ 12 & 13 Vict. c. 92, s. 3.

¹⁷ *Clarke v. Hague*, 29 L. J. M. C. 105; 8 W. R. 363; 2 L. T. 85; 24 J. P. 517; *Morley v. Greenhalgh*, 32 L. J. M. C. 93; 7 L. T. 624; 27 J. P. 197.

¹⁸ *Pitts v. Millar*, L. R. 9 Q. B. 380; 43 L. J. M. C. 102; 30 L. T. 328.

Persons impounding animals not providing food and water.¹
This does not apply to the pound-keeper.²

Persons keeping slaughter-places to affix names.³

Neck hair to be cut before slaughter, to be killed within three days, and food and water meanwhile provided.⁴

Cattle for slaughter not to be employed.⁵

Description of cattle slaughtered to be entered in book.⁶

Conveying so as to cause unnecessary suffering.⁷

Persons playing with false dice may be arrested.⁸

So also may every person who in any highway or other public place, whether a building or not, is guilty while drunk of riotous or disorderly behaviour, or who is drunk while in charge on any highway or other public place of any carriage, horse, cattle or steam-engine, or who is drunk while in possession of any loaded firearms.⁹

Offenders who have escaped cannot be retaken without warrant, unless the original offence was one for which no warrant was required.¹⁰

Under the following statutes the officer is only authorised to arrest persons found committing offences:—¹¹

Arrest under the Diseases of Animals Act extends also to the case of persons reasonably suspected¹² of being engaged in committing an offence, and is only to be exercised on the refusal of the party to give his name and address.¹³

The offences are:—

Contravention of Act, Order of Council, or regulation of local authority.

Failing to keep diseased animal separate, or to give notice to the police.¹⁴

The person must be aware of the fact that the animal is diseased.¹⁵

Failing to give, produce, observe, or do any notice, licence, rule or thing required by the Act, or order or regulation, doing anything unlawful or omitting where omission is unlawful under the Act, refusing admission to officer when entitled to enter, or obstructing or impeding or throwing carcase of any diseased animal into river or sea within three miles of shore.¹⁶

Using expired or blank licence or falsifying, fraudulently attempting to obtain compensation from Privy Council or local authority for slaughtered animal, or aiding or abetting, digging up carcase buried by order, or using prohibited vehicles.¹⁷

Power to arrest under the Explosives Act is also conferred on officers of the local authority.¹⁸ Constables may remove from licensed factories unauthorised persons.¹⁹

¹ 12 & 13 Vict. c. 92, s. 5.

² *Dargan v. Davies*, 2 Q. B. D. 118; 46 L. J. M. C. 122; 35 L. T. 810.

³ 12 & 13 Vict. c. 92, s. 7.

⁴ Sect. 8.

⁵ Sect. 9. This is not confined to licensed slaughter-houses: *Colam v. Hall*, L. R. 6 Q. B. 206.

⁶ Sect. 10.

⁷ Sect. 12.

⁸ Arch. J. P. 123.

⁹ 35 & 36 Vict. c. 94, s. 12.

¹⁰ 2 Hawk. c. 14, s. 9.

¹¹ As to this phrase see *ante*, p. 48.

¹² See *ante*, p. 39.

¹³ 57 & 58 Vict. c. 57, s. 43.

¹⁴ Sect. 4.

¹⁵ *Nicols v. Hall*, 8 C. P. 322.

¹⁶ Sect. 52.

¹⁷ Sect. 53.

¹⁸ 38 & 39 Vict. c. 17, s. 78.

¹⁹ Sect. 77.

The offences are:—

Manufacture at or keeping at unauthorised place.¹

Carrying on factory contrary to licence except using, in case of emergency or temporarily, one part of a building for another process of manufacture.²

Factory to be kept for that purpose only, fittings of danger buildings to be covered, lightning conductors provided unless considered unnecessary, taking articles liable to spontaneous ignition into danger, except for immediate use, repairs not to be done in danger building until room cleansed, notice outside danger building of quantity of ingredients allowed and copy of rules; tools to be wood or copper, and covered, suitable working clothes to be provided, no smoking, except in part allowed, vehicles for conveyance to have no exposed iron or steel, person under sixteen not to be employed except under supervision of adult, ingredients when process complete to be removed to magazine and to be sifted before use.³

Stores.—Provisions of Order in Council to be observed, amount not to exceed that on licence, stores to be kept for that purpose only, fittings of danger buildings to be covered, lightning conductors except store less than 1000 lb., repairs not to be done in danger building until room cleansed, tools to be wood or copper and covered, suitable working clothes to be provided, no smoking except in part allowed, person under sixteen not to be employed except under supervision of adult.⁴

Retail.—To be in house or safe, latter to be safe distance from highway, amount, detached safe 200 lb., in dwelling-house 50 lb., in safe in dwelling-house 100 lb., explosive articles not to be kept in or near safe, no exposed iron or steel in interior of receptacle, or more than 1 lb. to be in case or bag.⁵

All precautions to be taken to prevent fire or explosion and unauthorised persons having access.⁶

Hawking on highway.⁷ Selling to children under thirteen.⁸ Sale to be in closed packages, labelled.⁹

Packing and Conveyance.—Not exceeding 5 lb. in case, over 5 lb., if single, box to be approved, if double, inner to be a case approved, interior to be free from grit, not used for any other purpose, no iron or steel unless covered, not to exceed 100 lb., to be branded.¹⁰

Manufacturing prohibited articles.¹¹

Gunmakers.—In filling room not more than 5 lb., except in safety cartridges, no other work to be carried on, no fire or artificial light unless protected, room to be detached from magazine, notice of intention to use as filling room.¹²

Mines and Quarries.—Not more than prescribed amount, no other work to be carried on, room to be detached from magazine, one kind not to be made into another nor resolved into its ingredients, notice of intention to use as filling room.¹³

Failing to admit Government inspector,¹⁴ or to give notice of dangerous practices,¹⁵ or of accidents.¹⁶

Reconstructing buildings destroyed by accident without consent of Secretary of State.¹⁷

Obstructing officers of local authority.¹⁸

Throwing fireworks in public thoroughfares.¹⁹

Forging licences.²⁰

Defacing notices.²¹

¹ Sects. 4 and 5.

² Sect. 9.

³ Sect. 10.

⁴ Sect. 17.

⁵ Sect. 22.

⁶ Sect. 23.

⁷ Sect. 30.

⁸ Sect. 31.

⁹ Sect. 32.

¹⁰ Sect. 33.

¹¹ Sect. 43.

¹² Sect. 46.

¹³ Sect. 47.

¹⁴ Sect. 55.

¹⁵ Sect. 56.

¹⁶ Sect. 63.

¹⁷ Sect. 64.

¹⁸ Sect. 69.

¹⁹ Sect. 80.

²⁰ Sect. 81.

²¹ Sect. 82.

Persons agreeing to pay money or deliver goods on the event of a game or lottery may be apprehended.¹

So also may hawkers without licence, or not producing licence.² A travelling auctioneer is within the Act.³

As to highways :—⁴

Any person witnessing the commission of an offence may seize and detain the offender if unknown.⁵

The offences are :—

Carrying away materials belonging to surveyor.⁶

Riding on footpaths by the side of roads,⁷ or leading animals, carriages, etc., upon them, or tethering animals thereon.

Obstructing footways. This does not extend to a right to plough up,⁸ nor to a perambulator,⁹ but there can be no right to erect stalls for refreshments.¹⁰

Destroying the surface. This includes a footway over a field.¹¹

Damaging banks, causeways, direction posts or milestones.

Playing games to annoyance of passengers.¹²

Hawkers, or gypsies, pitching tents, or encamping. Making fires, or firing guns or fireworks within fifty feet of the centre of the road. There must be here injury, interruption or damage to the passengers.¹³ A burning tar-barrel on Guy Fawkes' Day is not within the section.¹⁴

Baiting bulls, laying timber, running filth, wilful obstructions.

Suffering underwood to grow,¹⁵ or rain-water to drop from the eaves¹⁶ is not within the section, but no continuance will make an obstruction lawful.¹⁷ A roller is an obstruction,¹⁸ and so are small ditches,¹⁹ and a person collecting a crowd by addressing them.²⁰

Persons guilty of pound-breach.²¹

¹ 42 Geo. III. c. 119, s. 6.

² 51 & 52 Vict. c. 38, s. 6. Hawker = any person travelling with a beast of burden selling any goods, etc., or exposing patterns thereof, and any person travelling by any means to any place in which he does not reside or carry on business, and there selling any goods, etc., in any house, shop, etc., hired by him for that purpose—s. 2. See *Londonderry v. McElhinny*, 9 C. L. Ir. 61.

³ *Hudson v. Shooter*, 55 J. P. 325.

⁴ See *Bach v. Holmes*, 57 L. J. M. C. 37; 56 L. T. 713; where it was held that s. 72 of the Act applies to the Metropolis.

⁵ 5 & 6 Will. IV. c. 50, s. 79.

⁶ Sect. 47.

⁷ Sect. 72.

⁸ *Mercer v. Woodgate*, 39 L. J. M. C. 21; L. R. 5 Q. B. 26; 21 L. T. 458; 18 W. R. 116; *Woolley v. Corbishley*, 24 J. P. 773.

⁹ *R. v. Matthias*, 1 F. & F. 570.

¹⁰ *Simpson v. Wells*, L. R. 7 Q. B. 214; 41 L. J. M. C. 105; 26 L. T. 163.

¹¹ *Brackenbury v. Thorsby*, 19 L. T. 692.

¹² See *Pappin v. Maynard*, 9 L. T. 327; 27 J. P. 745.

¹³ *Stinson v. Browning*, L. R. 1 C. P. 321; 35 L. J. M. C. 152; 13 L. T. 799; 14 W. R. 395.

¹⁴ *Hill v. Somerset*, 51 J. P. 742.

¹⁵ *Walker v. Homer*, 45 L. J. M. C. 34.

¹⁶ *Croasdill v. Ratcliff*, 5 L. T. 834.

¹⁷ *Gerring v. Basfield*, 16 C. B. N. S. 597; 11 L. T. 270; *Gully v. Smith*, 12 Q. B. D. 121; 53 L. J. M. C. 35; *Simpson v. Wells*, L. R. 7 Q. B. 214; 41 L. J. M. C. 105.

¹⁸ *Wilkins v. Day*, 12 Q. B. D. 110; 49 L. T. 399; 32 W. R. 123.

¹⁹ *Nicol v. Beaumont*, 53 L. J. Ch. 853; 50 L. T. 112.

²⁰ *Homer v. Cadman*, 55 L. J. M. C. 110; 54 L. T. 421; 34 W. R. 413.

²¹ Sect. 75.

Drivers causing damage to others, or quitting road, or driving carriage without owner's name, or not keeping left side, or interrupting free passage, or not having proper control, or driving furiously.¹

Where a carriage is liable to excise duty, the name is not necessary,² but there need be no intention to defraud to complete the offence of driving without owner's name.³ A bicycle is a carriage,⁴ and furious riding is punishable under the section.⁵

As to indecent advertisements, the offences are:—

Affixing to or inscribing on any house, etc., or delivering or attempting to deliver, or exhibiting to any inhabitant any picture or printed or written matter of any indecent or obscene nature,⁶ or procuring others to do so.⁷

The offences under the Vagrant Act are:—

Begging or causing children to do so.⁸

This section does not apply to persons unless their habit and mode of life is to wander abroad and beg.⁹

Exposing person indecently—to insult female.

Exposing wounds for alms, or fraudulently collecting the same.

Fortune-telling or other deception.¹⁰

This extends to "spirit-rapping"¹¹ and astrology.¹²

Found on enclosed premises for unlawful purpose.¹³

The purpose must be criminal, not merely immoral.¹⁴ It applies if the person is seen in the house but gets out and is taken on fresh pursuit, although he was not seen getting out of the house, but was found concealed on other premises near.¹⁵

In possession of burglarious instruments or any weapon with intent.¹⁶

Not maintaining family.¹⁷

This does not apply in case of desertion by wife¹⁸ or if there be an offer to support.¹⁹

Obscene pictures, shewing in streets or shops.

Pedlars unlicensed.

Prostitutes misbehaving in streets, etc.²⁰

¹ Sect. 78.

² *Danby v. Hunter*, 5 Q. B. D. 20; 49 56 L. J. M. C. 41; 56 L. T. 235; 35 W. L. J. M. C. 15; 41 L. T. 622; 28 W. R. 223. R. 379.

³ *Whitrow v. Brown*, 56 J. P. 374.

⁴ 51 & 52 Vict. c. 41, s. 85. See *Hayes v. Stevenson*, 9 W. R. 53; 3 L. T. 296; 24 J. P. 740.

Hatton v. Treeby, 1897, 2 Q. B. 452; 77 15 R. v. *Howarth*, 1 Moo. C. C. 207.

⁵ *Williams v. Evans*, L. R. 1 Ex. 277; 35 L. T. 864.

⁶ 52 & 53 Vict. c. 18, s. 3.

⁷ Sect. 4.

⁸ 5 Geo. IV. c. 83, s. 3.

⁹ *Pointon v. Hill*, 12 Q. B. D. 306; 50 L. T. 268.

¹⁰ 5 Geo. IV. c. 83, s. 4.

¹¹ *Monck v. Hilton*, L. R. 2 Ex. D. 268; 46 L. J. M. C. 163; 36 L. T. 66; 25 W. R. 373.

¹² *Penny v. Hanson*, 18 Q. B. D. 478; 56 L. J. M. C. 41; 56 L. T. 235; 35 W. R. 379.

¹³ Sect. 4.

¹⁴ *Hayes v. Stevenson*, 9 W. R. 53; 3 L. T. 296; 24 J. P. 740.

¹⁵ *R. v. Howarth*, 1 Moo. C. C. 207.

¹⁶ Sect. 4.

¹⁷ Sect. 3; 7 & 8 Vict. c. 100, s. 6, renders the mother liable in case of an illegitimate child. But arrest without warrant is not valid in either case:

Horley v. Rogers, 6 Jur. N. S. 605.

¹⁸ *R. v. Flinton*, 1 B. & A. 227.

¹⁹ *Flannagan v. Bishopwearmouth*, 27 L. J. M. C. 46; 6 W. R. 38.

²⁰ Sect. 3.

Playing or betting in street or public place with tables, coins, cards, tokens, etc.¹

Depositing money with a betting agent is not within the section.² Nor is gaming unless it be at some game or pretended game of chance.³

A railway carriage is a public place,⁴ and so is a place to which the public have access, though not of right.⁵

A *pari mutuel* is an instrument of gaming.⁶

Returning to parish after removal by order of justices.⁷

Suspected person or reputed thief frequenting, or loitering about, or in wharves, highways and places adjacent, and places of public resort with intent.⁸ The person must be seen more than once to be frequenting.⁹ A private house during a sale is a place of public resort,¹⁰ and so is a railway platform,¹¹ but a steamboat is not.¹²

Wandering without visible means of subsistence and not giving a good account of oneself.¹³

Persons throwing any rubbish into any public garden, or trespassing, or climbing the fences, or stealing or damaging the flowers and plants, or committing any nuisance there, are liable to arrest.¹⁴

So are persons carrying a gun, refusing to give name and address when required.¹⁵

Persons on licensed premises during closing hours refusing to give correct name and address may be arrested.¹⁶

Premises other than those under exceptional licences, if situate in the metropolitan district (*i.e.*, in the city or within four miles of Charing Cross), must be closed on week days (other than Saturdays) from 12.30 to 5.30 A.M. If beyond that area, but in the metropolitan police district, or in a town or place with a population of not less than 1000, determined to be a populous place by the licensing committee, from 11 P.M. to 6 A.M. Elsewhere from 10 P.M. to 6 A.M.

¹ 36 & 37 Vict. c. 38.

² *Hirst v. Molesbury*, L. R. 6 Q. B. 130; 40 L. J. M. C. 76; 19 W. R. 246; 23 L. T. 555.

³ *Ridgway v. Farndale*, 1894, 2 Q. B. 309; 67 L. T. 318.

⁴ *Langrish v. Archer*, 10 Q. B. D. 44; 52 L. J. M. C. 47; 47 L. T. 548; 31 W. R. 183.

⁵ *Turnbull v. Appleton*, 45 J. P. 469.

⁶ *Tollett v. Thomas*, L. R. 6 Q. B. 514; 40 L. J. M. C. 209; 19 W. R. 890; 24 L. T. 508.

⁷ 5 Geo. IV. c. 83, s. 3.

⁸ Sect. 4; 34 & 35 Vict. c. 112, s. 15; 54 & 55 Vict. c. 69, s. 7.

⁹ *Re Cross*, 26 L. J. M. C. 28; 1 H.

& N. 651; *R. v. Clark*, 14 Q. B. D. 92; 54 L. J. M. C. 66; 52 L. T. 136; 33 W. R. 226.

¹⁰ *Sewell v. Taylor*, 29 L. J. M. C. 50; 8 W. R. 26; 1 L. T. 37.

¹¹ *Ex parte Davis*, 26 L. J. M. C. 178; 5 W. R. 522.

¹² *R. v. Taylor*, 21 J. P. 488.

¹³ Sect. 4.

¹⁴ 26 Vict. c. 13, s. 5. This Act only applies where land is irrevocably set apart for public use: *Tulk v. Metropolitan Board of Works*, L. R. 3 Q. B. 682; 37 L. J. Q. B. 272; 16 W. R. 985.

¹⁵ 33 & 34 Vict. c. 57, s. 9.

¹⁶ 35 & 36 Vict. c. 94, s. 25. As to Wales see 44 & 45 Vict. c. 61.

On Saturday and Sunday—

In the met. dist. from	12 Sat. night to 1 P.M. Sun.
" " "	11 Sun. " 5 A.M. Mon.
In met. pol. dist.	} 11 Sat. " 12:30 P.M. Sun.
or populous place	
" " "	10 Sun. " 6 A.M. Mon.
Elsewhere	10 Sat. " 12:30 P.M. Sun.
" " "	10 Sun. " 6 A.M. Mon.

Sunday, Good Friday and Christmas Day, met. dist. 3·0, elsewhere 2·30 to 6 P.M.

There may be a sale to persons lodging in the house or in case of railway stations to persons arriving or departing by train, and to *bond fide* travellers.¹

Persons misconducting themselves in public-houses may also be arrested.²

Persons damaging or extinguishing street lamps are also liable.³

Lunatics wandering may be apprehended⁴ and taken to the work-house.

Merchant seamen deserting are liable to arrest.⁵

So also are pedlars refusing to produce certificate, or to permit inspection of pack.⁶

Commercial travellers, vendors of books authorised by publishers, sellers of articles of food and for charitable purposes are not within the Act.⁷

Casual paupers may be removed from the ward to the work-house,⁸ and persons obstructing a post office may be removed.⁹

Where a constable arrests a person on a reasonable charge preferred by another person he is under no liability for so doing if he act purely ministerially. The liability (if any) rests with the party so giving in charge.¹⁰

Constables may arrest any unknown person taking a profane oath in their hearing.¹¹

Canals and Rivers.—These officers may arrest disorderly persons, night loiterers, and persons suspected of having committed or being about to commit or found committing offences against the Act.¹²

¹ 37 & 38 Vict. c. 49, ss. 3, 10.

² 35 & 36 Vict. c. 94, s. 18; *Howell v. Jackson*, 6 C. & P. 723; and see 37 & 38 Vict. c. 49, s. 17.

³ 3 & 4 Will. IV. c. 90, s. 55.

⁴ 53 & 54 Vict. c. 5, ss. 15, 20.

⁵ 57 & 58 Vict. c. 60, s. 222—does not extend to enlistment in the navy—s. 195.

⁶ 34 & 35 Vict. c. 96, s. 18. Pedlar = any hawker, tinker, metal-worker, chair-mender, etc., who travels on foot and goes from town to town or house to house selling goods, etc., or procuring orders therefor or selling his skill in handicraft—s. 3.

⁷ *R. v. Hodgkinson*, 10 B. & C. 74; 5 M. & R. 162; *Gregg v. Smith*, 42 L. J. M. C. 121; L. R. 8 Q. B. 302; 21 W. R. 737; 28 L. T. 555.

⁸ See post, p. 128.

⁹ 47 & 48 Vict. c. 76, s. 9.

¹⁰ *Flewster v. Royle*, 1 Camp. 188; *Glynn v. Houston*, 2 M. & G. 337; 2 Sc. N. R. 554; and see *Creagh v. Gamble*, 24 L. R. Ir. 458; *Hogg v. Ward*, 3 H. & N. 417; and cf. *Grinham v. Willey*, 28 L. J. Ex. 242; 4 H. & N. 496.

¹¹ 19 Geo. II. c. 21, s. 3.

¹² 3 & 4 Vict. c. 50, s. 10.

Persons found committing¹ offences may be arrested by any constable.²

The offences are :—

Assaulting constables on duty.³

Injuring contents of packages.⁴

Possessing instruments, etc., for carrying away liquor, etc.⁵

Stolen property—offering in pawn.⁶

Metropolitan.—The following persons may be arrested in the Metropolitan Police District :—

Every person who shall, to the annoyance of the inhabitants or passengers, expose for shew or sale (except in market), or feed animals, or shew any caravan containing animal, or public entertainment, or shoe, etc., any animal (except in case of accident), or clean, etc., or break or exercise any animal.⁷

This does not apply to cattle turned out under the supervision of a boy.⁸

Or lead or ride any animal, or drive any carriage, etc., or fasten horse, etc., on footway.

Persons taking part in open-air meetings (except for the election of members) within a mile of Westminster Hall during the sittings of, and with a view to intimidate Parliament or the Courts of Law,⁹ or more than ten persons repairing to the Queen or Parliament to present a petition or address.¹⁰ The public have no right to occupy Trafalgar Square for meetings if prohibited by the Commissioners of Works.¹¹

Three or more persons betting.¹²

In some cases arrest may take place for breach of bye-laws.¹³

Causing carriages to stand longer than necessary or thereby causing obstructions,¹⁴ or cleaning or repairing (except in case of accident).

Persons misbehaving in the driving of cattle or unlawfully pelting or hunting them.¹⁵

Or damaging person or property and refusing to make amends,¹⁶ or property of the local authority.¹⁷

Persons idle and disorderly.¹⁸ These words must be construed strictly.¹⁹

Suffering ferocious dogs to be at large, or causing them to worry persons or animals.²⁰

Booths open in fairs between 11 P.M. and 6 A.M., the owners or managers thereof,²¹ or when such fair has been declared illegal.

Persons riding or driving furiously or to the common danger.²²

Persons damaging fences, or affixing placards thereto without consent of owner, or damaging trees, shrubs or seats.²³

¹ *Ante*, p. 48.

² Sect. 11.

³ Sect. 6.

⁴ Sect. 8.

⁵ Sect. 7.

⁶ Sect. 12.

⁷ 2 & 3 Vict. c. 47, s. 54. The offences under this section must be committed within view of the constable in a thoroughfare or public place.

⁸ See *Sherborn v. Wells*, 32 L. J. M. C. 179; 11 W. R. 594; 8 L. T. 274.

⁹ 57 Geo. III. c. 19, s. 23; and see 28 & 29 Vict. c. 48, s. 18.

¹⁰ 13 Car. II. c. 5.

¹¹ *Ex parte Lewis*, 21 Q. B. D. 191; 57 L. J. M. C. 108; 59 L. T. 388; 37

W. R. 13; *R. v. Graham*, 16 Cox C. C. 420. Such meetings are now permitted under regulations.

¹² 90 & 31 Vict. c. 134, s. 23; see 48 & 49 Vict. c. 18.

¹³ 54 & 55 Vict. c. 76, s. 16.

¹⁴ 2 & 3 Vict. c. 47, s. 54.

¹⁵ *Ibid.*

¹⁶ *Ibid.*, s. 62.

¹⁷ 18 & 19 Vict. c. 120, s. 206.

¹⁸ 2 & 3 Vict. c. 47, s. 58.

¹⁹ *Stocken v. Carter*, 4 C. P. 477; and see 10 Geo. IV. c. 44, s. 7.

²⁰ 2 & 3 Vict. c. 47, s. 54.

²¹ Sect. 38.

²² *Ibid.*

²³ *Ibid.*

Persons interfering with the operations of the fire brigade may be removed.¹

Persons wantonly discharging fire-arms or throwing missiles or making bonfires, or throwing fireworks, may be arrested.²

So also may persons selling, distributing or exhibiting indecent prints, songs or exhibitions.

And those, except guards of the post office, blowing or using any noisy instrument to announce a show, or to hawk or sell articles or obtain alms.

And persons unlawfully knocking at doors, ringing bells, or extinguishing lamps.

Or rolling casks, etc., or carrying planks or ladders, etc., on any footway.

Or using threatening or abusive or insulting words or behaviour.³

Or unknown persons acting in parks in contravention of the rules thereof.

These rules are :—

1. Driving vehicles not admitted, or when admitted otherwise than according to rule.

2. Riding contrary to rule, or exercising or training or riding or driving furiously, or on road closed by notice in writing.

3. Drilling, playing games, practising gymnastics, or selling or letting commodities other than according to rule.

4. Delivering addresses contrary to rule.

5. Intoxicated person.

6. Walking on beds or enclosed grounds.

7. Fishing, bathing or skating not according to rule.

8. Dogs at large other than according to rule.

9. Destroying trees, seats, railings, or exhibiting advertisements.

10. Indecency or profane language.

11. Discharging fire-arms, throwing missiles, or making bonfires or letting off fireworks.

12. Wilful interference with or annoyance of any other person.

13. Worrying animals grazing or birds in water.

14. Entering and remaining between sunset and sunrise except to pass along way kept open.

This Act applies to Hyde, St. James' and the Green Parks, Kensington Gardens, Parliament Square Garden, Regent and Kennington Parks, Primrose Hill, Battersea and Greenwich Parks, Kew Gardens Pleasure Grounds and Green, Hampton Court Park, Gardens and Green; Richmond Park and Green, and Bushey Park.⁴

Persons playing games or making slides.⁵

Destitute persons may be conducted to places of reception for paupers.⁶

Prostitutes soliciting may be apprehended.⁷

Persons reasonably suspected of conveying stores stolen from Her Majesty may be stopped, searched and detained.⁸

Persons refusing to conform to regulations for traffic,⁹ or when specially approved by the Secretary of State, shall refuse to regard the same, and to give name and address,¹⁰ are liable to arrest.

So are persons riding on shafts, or not having proper control of horses or other animals drawing.¹¹

Persons suspected of felony may be arrested on board ship by a superintendent, inspector or serjeant;¹² and any constable may arrest any one unloading or throwing into the Thames any rubbish or refuse, or on the shore thereof, or into the streams communicating therewith, or suffering offensive matter to flow into the said river.¹³

¹ 28 & 29 Vict. c. 90, s. 12.

² 2 & 3 Vict. c. 47, s. 54.

³ *Ibid.*

⁴ 35 & 36 Vict. c. 15, ss. 5, 7, 10. Park-keepers have the same powers as constables. Commons are managed under local Acts. See *ante*, p. 92.

⁵ 2 & 3 Vict. c. 47, s. 54.

⁶ 28 & 29 Vict. c. 34, s. 7.

⁷ 2 & 3 Vict. c. 47, s. 54.

⁸ 38 & 39 Vict. c. 25, s. 6.

⁹ 2 & 3 Vict. c. 47, s. 54.

¹⁰ 30 & 31 Vict. c. 134, s. 12.

¹¹ 2 & 3 Vict. c. 47, s. 54.

¹² Sect. 34.

¹³ 27 & 28 Vict. c. 113, s. 74.

Unknown persons sweeping dirt into sewers,¹ or interrupting workmen of the local authority,² may be arrested.

So also may persons reasonably suspected of having or conveying things stolen.³ This applies only to possession in the streets;⁴ but the offender may be arrested subsequently on immediate pursuit not in a street.⁵

And unknown offenders against this Act,⁶ or persons found committing any such offences.⁷

The misdemeanours in this Act are—

Breaking packages in order to spill contents (on river).⁸

Cutting ropes, cables, etc.⁹

Being drunk and disorderly.¹⁰

Framing false bills of parcels.¹¹

Letting articles fall into river with intent.¹²

Piercing casks, opening packages (river).¹³

Possessing instruments for unlawfully carrying away wine, etc.¹⁴

Receiving ships' stores from seamen.¹⁵

Persons arrested must be forthwith delivered into the custody of the constable in charge of the nearest station.¹⁶

Forthwith means with reasonable promptness.¹⁷

County and Municipal.—The special powers of these officers are confined to the arrest of idle and disorderly persons, disturbers of the public peace, and persons reasonably suspected of intention to commit felony.¹⁸

Towns.—The Towns Police Clauses Act applies to all urban authorities under the Public Health Act.¹⁹

The powers of arrest here are :—

Persons shewing or selling (except in a market or fair) any animal, or shoeing, farrying, cleaning, exercising or turning them loose, or shewing any public entertainment.²⁰

¹ 18 & 19 Vict. c. 120, ss. 205, 229.

² Sect. 218.

³ 2 & 3 Vict. 47, s. 66.

⁴ *Hadley v. Perks*, L. R. 1 Q. B. 444; 35 L. J. M. C. 177; 14 W. R. 730; 14 L. T. 325.

⁵ *R. v. Fisher*, 32 L. T. 22.

⁶ Sect. 63, and see the offences mentioned in s. 60, which consist of shortly—cleansing articles, etc., in street, throwing rubbish, beating mats (except door-mats before 8 A.M.), throwing litter, etc., except sand in frost or matter to prevent noise in sickness, emptying soil, etc., between 6 A.M. and 8 P.M., keeping pig-sties to the front of a street, selling articles in parks, etc., except by consent of authority, hanging goods over ways, or setting up poles or awnings so as to obstruct, leaving open vaults or cellars dangerously or insufficiently fenced.

⁷ Sect. 66.

⁸ Sect. 32.

⁹ Sect. 27.

¹⁰ Sect. 58.

¹¹ Sect. 29.

¹² Sect. 28.

¹³ Sect. 31.

¹⁴ Sect. 30.

¹⁵ Sect. 26.

¹⁶ Sect. 69.

¹⁷ *R. v. Ashton*, 19 L. J. M. C. 236; 15 L. T. 259; *Hancock v. Somes*, 28 L. J. M. C. 196; 7 W. R. 422; *Costar v. Hetherington*, 28 L. J. M. C. 198; 7 W. R. 413.

¹⁸ 45 & 46 Vict. c. 50, s. 193. See 19 & 20 Vict. c. 69, ss. 6, 31. And as to parish constables, see 3 & 4 Will. IV. c. 90, s. 41.

¹⁹ 38 & 39 Vict. c. 55, s. 171.

²⁰ 10 & 11 Vict. c. 89, s. 28. The offences under this section must be committed in a street to the obstruction, annoyance or danger of the residents or passengers, and within view of the constable; and see *Sherborn v. Wells*, ante, p. 113.

An auction caravan, for which the owner paid toll, is not within the section.¹

Or placing any awning over a footway less than eight feet from the ground.

Or allowing carriages, barrows, etc., to stand longer than necessary, or thereby interrupting a crossing or footpath; or repairing carriages (except in case of accident).²

This has been held only to apply to carriages, etc., and not to persons.³

Persons slaughtering cattle, except when over-driven, and killing on the spot necessary.⁴

Or allowing any unmuzzled ferocious dog to be at large, or sets on any dog to worry any person or animal, or suffers it to be at large believing it to be in a rabid state, or after a public notice to confine dogs has been issued by a justice.

Or driving two or more carts, not fastened together at a less distance than four feet between, or driving or riding furiously.

Or wantonly discharging fire-arms or fireworks, throwing stones, or making bonfires.⁵

Or flying kites or making slides.

Or allowing goods to project on footway so as to incommode the passage thereof, or rolling any cask, etc., or carrying any ladder or timber on any footway except crossing the same, or loading and unloading any carriage, or leaving any furniture, etc., or stool, bench or stall on any footway.⁶

Or wilfully exposing the person.⁷ This must take place in the presence of more than one person.⁸

Or offering for sale or distribution or exhibiting any obscene books, prints, etc., or using any profane or obscene language.⁹

Or wilfully disturbing any inhabitant by ringing bells, knocking at doors, or unlawfully extinguishing the light of any lamp.

Being instructed to deliver papers is no sufficient answer to a disturbance by ringing bells.¹⁰

Or placing any line across a street, or hanging clothes thereon.

Or beating carpets or mats (except door-mats before 8 A.M.).

Or throwing or allowing to run into any street any offensive matter, except the laying of sand in frost or litter in sickness, if removed when the occasion ceases.¹¹

Or keeping pig-sty open to any street, etc., so as to be a nuisance.

Or leaving any pit, cellar or vault unfenced.¹²

In Birmingham, Bristol, Leeds, Liverpool and Manchester constables may conduct destitute persons to asylums for relief.¹³

Prostitutes soliciting are liable to arrest.¹⁴

So also are persons having charge of carriages riding on shafts, or not having proper control, or not keeping near side, or passing on off-side, or not allowing free passage, or riding or driving on any footway, or fastening animals across the same.

Or throwing rubbish from roof, except snow thrown so as not to fall on persons.

Or working any timber, stones, lime, etc., or drawing any timber or iron without sufficient means for guiding the same.

Or placing heavy articles in upper windows not sufficiently guarded.

¹ *Ball v. Ward*, 33 L. T. 170.

² 10 & 11 Vict. c. 89, s. 28.

³ *R. v. Long*, 59 L. T. 33; *R. v. Williams*, 55 J. P. 406. [*Wemyss v. Black*, 8 R. 25; *Black v. Simpson*, 5 Coup. 212.]

⁴ 10 & 11 Vict. c. 89, s. 28.

⁵ [*Simon v. Reid*, 4 Coup. 220.]

⁶ [*McDonald v. White*, 9 R. 43.]

⁷ S. 28.

⁸ *R. v. Webb*, 18 L. J. M. C. 39.

⁹ 10 & 11 Vict. c. 89, s. 28. [*Cf.*

Marr v. McArthur, 5 R. 38; *Stirling v. Murray*, 10 R. 59.]

¹⁰ *Clarke v. Higgins*, 11 C. B. N. S. 545.

¹¹ Refuse may be placed on curb before 8 A.M. in box in London in streets named by the Commissioners of Sewers: 30 & 31 Vict. c. 134, s. 25.

¹² 10 & 11 Vict. c. 89, s. 28.

¹³ 7 & 8 Vict. c. 101, s. 53.

¹⁴ 10 & 11 Vict. c. 89, s. 28.

Or allowing servant to stand on sill of window for cleaning same, unless in basement story.

And persons found committing¹ offences punishable on indictment, or as a misdemeanour against this or the special² Act.

Persons are to be taken before a justice as soon as convenient, and not detained without the order of a justice more than forty-eight hours.³

The misdemeanours are :—

Cab-drivers misbehaving.⁴

Drunk and disorderly.⁵

Persons allowing chimneys to take fire.⁶

Victuallers harbouring constables on duty.⁷

Coffee-shop keepers harbouring disorderly persons.⁸

Keeping places for bear-baiting.⁹

Pound breach.¹⁰

Entry.—Constables may be required to accompany factory inspectors when obstruction is apprehended.¹¹ They are authorised to enter on lands (other than a dwelling-house or the curtilage thereof) if about to demand the production of a licence from a person carrying a gun.¹²

They may also enter any house, room or place where any public table or board is kept for playing at billiards, bagatelle, or any game of the like kind, whenever they think proper.¹³ And to detect the violation of the provisions of the Licensing Acts, which it is their duty to enforce, enter any licensed premises or any premises in respect of which an occasional licence is in force.¹⁴ This section applies only to places licensed by justices,¹⁵ but the constable may not demand to enter unless there is some evidence from which he may reasonably suppose that a breach of the law is being committed.¹⁶

As to slaughter-houses, they may, either alone or accompanied by any inspector appointed under 26 Geo. III., c. 71, at all reasonable times in the daytime, enter and view the same, and take an account of all horses or cattle found thereon.¹⁷

And on premises where they have reason to believe a threshing-machine is worked contrary to the Act.¹⁸

They may not of their own motion turn trespassers off land.¹⁹

Canal and River.—The power of these officers to enter vessels is limited to where they have just cause to believe that an offence against the Act has been or is about to be committed thereon.²⁰

¹ See *ante*, p. 48.

² *I.e.*, any Act passed for the regulation of towns.

³ Sect. 15.

⁴ Sect. 61.

⁵ Sect. 29.

⁶ Sects. 30, 31.

⁷ Sect. 34.

⁸ Sect. 35. An ale-house is within this section: *Cole v. Coulton*, 29 L. J. M. C. 125; 8 W. R. 412; 36 L. T. 216.

⁹ Sect. 36.

¹⁰ Sect. 26.

¹¹ 41 & 42 Vict. c. 16, s. 68.

¹² 33 & 34 Vict. c. 57, s. 10.

¹³ 8 & 9 Vict. c. 109, s. 14.

¹⁴ 37 & 38 Vict. c. 49, s. 16.

¹⁵ *Harrison v. McL. Meel*, 48 J. P. 469; 50 L. T. 210.

¹⁶ *Duncan v. Dowding* 1897, 1 Q. B. 575; 76 L. T. 294.

¹⁷ 7 & 8 Vict. c. 87, s. 4 (repealed as to London; 54 & 55 Vict. c. 76, s. 142). The Act applies to knacker's yards.

¹⁸ 41 & 42 Vict. c. 12, s. 4. As to chaff-cutting machines see 60 & 61 Vict. c. 60, s. 6.

¹⁹ *R. v. Cox*, 1 F. & F. 664.

²⁰ 3 & 4 Vict. c. 50, s. 9; see *ante*, p. 112.

Metropolitan.—These constables, employed under the Dockyard Acts,¹ have no right to demand entrance to a licensed house to search for absentees from the Navy.²

A superintendent or inspector may at all times, with such constables as he shall think necessary, by night or day, enter any ship, boat, etc., in the Thames, or the creeks or docks, to inspect the conduct of any constable there stationed, or of the persons employed to load or unload, and to take such measures as may be necessary to prevent fire or accident and preserve the peace, and effectually prevent or detect all felonies and misdemeanours.³

Search.—Any constable may in any highway, street or public place search any person whom he may have good cause to suspect of coming from any land where he shall have been unlawfully in search or pursuit of game,⁴ or any person aiding or abetting such person, and having in his possession any game unlawfully obtained, or any gun, part of a gun, or nets or engines used for the killing or taking game.⁵ It is not necessary that any game should be found in the nets,⁶ but it should be seized on the highway⁷ and found on the defendant's person,⁸ though this is not absolutely necessary.⁹

Seizure and Detention.—Under the Diseases of Animals Act the constable may stop, detain and examine any animal, vehicle, boat or thing to which an offence, or suspected offence relates, and require the same to be forthwith taken back to any place wherefrom it was unlawfully removed and execute that requisition.¹⁰

Where any person having charge of any vehicle or animal is arrested for an offence against the Cruelty to Animals Act, the constable may take charge of such vehicle or animal and deposit the same in some place of safe custody.¹¹

Dogs reasonably supposed to be savage straying may be detained until expenses paid.¹²

Any Government inspector, constable or officer of the local authority having reasonable cause to believe that any explosive or ingredient of an explosive, or substance found by him is liable to be forfeited, may seize and detain the same until a Court of summary jurisdiction has determined the question of forfeiture. In such case the officer seizing may either require the occupier of the place in which it was seized (whether a building or not, or a carriage, boat or

¹ 23 & 24 Vict. c. 135.

² *Turner v. Ford*, 37 L. T. 352.

³ 2 & 3 Vict. c. 47, ss. 33, 34.

⁴ Includes persons seen poaching:
Hall v. Robinson, 53 J. P. 310.

⁵ 25 & 26 Vict. c. 114, s. 2. Game = pheasants, partridges, grouse, black-game and their eggs, hares, woodcocks, snipe and rabbits.

⁶ *Jenkins v. King*, L. R. 7 Q. B. 480.

⁷ *Clarke v. Crowder*, L. R. 4 C. P. 688.

⁸ *Turner v. Morgan*, L. R. 10 C. P. 587.

⁹ *Lloyd v. Lloyd*, 14 Q. B. D. 725; 53 L. T. 536; 33 W. R. 457.

¹⁰ 57 & 58 Vict. c. 57, s. 43.

¹¹ 12 & 13 Vict. c. 92, s. 19.

¹² 34 & 35 Vict. c. 56, s. 1; and see 57 & 58 Vict. c. 22, ss. 2, 3 as to injured horses.

ship) to detain the same in such place, or in any place under the control of such occupier, or may remove it in such manner and to such place as will, in his opinion, least endanger the public safety, and there detain it.

The receptacles containing the same may be seized, and detained, and removed in like manner as the contents thereof.

The officers seizing the same may use for the purposes of the removal and detention thereof any ship, boat or carriage in which the same was seized, and any tug, tender, engine, tackle, beasts and accoutrements belonging to or drawing, or provided for drawing, such ship, boat or carriage, and shall pay to the owner a reasonable compensation for such use, to be determined, in case of dispute, by a Court of summary jurisdiction, and to be recovered in like manner as penalties under the Act.

The same shall, so far as practicable, be kept and conveyed in accordance with the Act and with all due precaution to prevent accidents.¹

Carts, etc., in or on which there are shall be reason to suspect that game unlawfully obtained, or articles or things used for the purpose of taking the same are carried, may be stopped and searched, and if found therein, may be seized and detained.²

If the game, gun, etc., is visible, a search of the person is not necessary to give jurisdiction to seize.³

Money which has nothing to do with the charge cannot be taken.⁴

Animals, carts or goods in the possession of persons arrested under the Vagrant Act may be seized and detained.⁵

Canal and River.—These officers may stop, search and detain boats or carriages on which there is reason to suspect anything stolen,⁶ and such property may be taken charge of.⁷

Metropolitan.—When persons in charge of animals or carriages are taken in custody under the Metropolitan Police Act, such animals or carriages may be deposited in some place of safe custody.⁸

Carts, etc., within five miles of the post office not having owner's name thereon may be seized.⁹ This does not apply to carriages liable to excise duty.¹⁰

Dogs not under control may be detained until payment of expenses.¹¹

Carts and carriages removing furniture between 8 P.M. and 6 A.M., or at any time to evade the payment of rent, may be stopped¹² until due inquiry can be made.

¹ 38 & 39 Vict. c. 17, s. 74.

² 25 & 26 Vict. c. 114, s. 2.

³ *Hall v. Knox*, 32 L. J. M. C. 1.

⁴ *R. v. O'Donnel*, 7 C. & P. 138; *R. v. D'Eyncourt*, 21 Q. B. D. 109.

⁵ 5 Geo. IV. c. 83, s. 8.

⁶ 3 & 4 Vict. c. 50, s. 11.

⁷ Sect. 9.

⁸ 2 & 3 Vict. c. 47, s. 68.

⁹ 1 & 2 Will. IV. c. 22, s. 60.

¹⁰ *Danby v. Hunter*, 5 Q. B. D. 20; 49 L. J. M. C. 15; 41 L. T. 622; 28 W. R. 223.

¹¹ 30 & 31 Vict. c. 134, s. 18. See

Wren v. Pocock, 34 L. T. 697.

¹² 2 & 3 Vict. c. 47, s. 67.

And so also may boats, carts or carriages, in or upon which there is reason to believe anything stolen or unlawfully obtained may be found.¹

Swine found straying in a street or public place may be seized and removed.²

Towns.—The police under the Towns Police Clauses Act may impound cattle found straying within the limits of the special Act.³

Bail.—Where persons are brought to the station charged with offences punishable by summary jurisdiction, if it be not practicable to bring them before the justice within twenty-four hours, the superintendent or inspector must inquire into the case, and, except where the offence appears to him to be serious, shall discharge the prisoner upon his entering into recognisance,⁴ with or without sureties, for a reasonable amount to appear before the Court.⁵

Subject to this enactment, there is, generally speaking, no obligation to give bail on arrest. It is a matter which usually falls within the discretion of the officer in charge of the station.⁶

Chimney-sweepers and Pedlars.—Chimney-sweepers may be required to give their name and address, and to produce their certificate.⁷

Pedlars may be required to produce their certificate and to permit their pack to be inspected.⁸

Dogs.—Metropolitan.—Constables may destroy dogs suspected to be rabid, or when detained for contravention of muzzling order, after three days.⁹

Fairs.—Metropolitan.—Booths, etc., may be removed from ground when a fair has been declared unlawful.¹⁰

Gun.—Persons not in Her Majesty's service carrying gun may be requested to produce licence, and on refusal or neglect to do so, to state his name and address.¹¹

Traffic.—Metropolis.—All constables are authorised to aid the Fire Brigade in the execution of their duties. They may close any street in or near which a fire is burning.¹²

¹ 2 & 3 Vict. c. 47, ss. 34, 66.

² 54 & 55 Vict. c. 76, s. 17.

³ 10 & 11 Vict. c. 89, s. 24.

⁴ Recoverable summarily as a fine: 42 & 43 Vict. c. 42, s. 9.

⁵ Sect. 38.

⁶ As to Metropolis, 10 Geo. IV. c. 44, s. 9; 2 & 3 Vict. c. 47, ss. 70, 72. As to county and municipal, 19 & 20 Vict. c. 69, s. 6; 45 and 46 Vict. c. 50, s. 227.

⁷ 38 & 39 Vict. c. 70, s. 16.

⁸ Sect. 17.

⁹ 2 & 3 Vict. c. 47, s. 61; 30 and 31 Vict. c. 134, s. 18.

¹⁰ 2 & 3 Vict. c. 47, s. 39; 31 & 32 Vict. c. 106, s. 2.

¹¹ 33 & 34 Vict. c. 57, ss. 7, 9.

¹² 28 & 29 Vict. c. 90, s. 12.

GAOLERS.

As to criminal prisoners see Part I.¹ In cases falling within this class there is generally no power to impose hard labour.²

In prisons where debtors are confined they are to be separated altogether from criminal prisoners.³

First-class misdemeanants are not criminal prisoners.⁴

Persons not sentenced to hard labour are to be divided into three divisions; and those committed in default of payment of a debt or in lieu of distress to satisfy a sum of money adjudged to be paid by order of a Court of summary jurisdiction without hard labour are not to be placed in association with convicted prisoners nor compelled to wear prison dress unless their own clothing is unfit for use.⁵

DISEASES OF ANIMALS INSPECTORS.

These officers, who are under the orders of the Board of Agriculture, have the same powers as inspectors have under the Act.⁶ They may, on the representation of a local inspector that the Act or an order or local regulation has not been complied with, detain a vessel, a copy of the representation being delivered to the master.⁷

BURIAL GROUNDS INSPECTOR.

The duty of this officer is to inspect burial grounds in order to ascertain whether the regulations (if any) made by the Secretary of State in respect thereto, have been complied with.⁸

This officer also inspects retreats for inebriates for the same purpose.⁹ In this case non-compliance with the regulations constitutes an offence against the Act.¹⁰

CRUELTY TO ANIMALS INSPECTORS.

These officers visit registered places to secure compliance with the provisions of the Vivisection Act.¹¹ Except under special certificate, experiments must be performed with a view to the advancement by new discovery of physiological knowledge by a person holding a licence, but not as an illustration of lectures, nor for the purpose of attaining manual skill. The animal must be under the influence of a sufficiently powerful anæsthetic (which does not include *urari* or *curare*¹²), and if it be seriously injured, be killed before it recovers from the influence thereof.

¹ *Ante*, p. 52.

² See 11 & 12 Vict. c. 43, s. 22; 14 & 15 Vict. c. 100, s. 29; *R. v. Baker* 7 A. & E. 502.

³ 28 & 29 Vict. c. 126, s. 17.

⁴ 61 & 62 Vict. c. 49, ss. 4, 6.

⁵ Sect. 6.

⁶ See *ante*, p. 95.

⁷ 53 & 54 Vict. c. 14, s. 1; 56 & 57 Vict. c. 43; 57 & 58 Vict. c. 57, s. 25.

⁸ 18 & 19 Vict. c. 128, s. 8. See bye-laws, *ante*, p. 92.

⁹ 42 & 43 Vict. c. 19, s. 15; 51 & 52 Vict. c. 19.

¹⁰ 42 & 43 Vict. c. 19, s. 17.

¹¹ 39 & 40 Vict. c. 77, s. 10.

¹² Sect. 4. As to Inspectors of Anatomy, see 2 & 3 Will. IV. c. 75, s. 5.

EXPLOSIVES INSPECTORS.

These officers may for the purpose of making necessary examination and inquiry, enter, inspect and examine any factory, magazine or store of any explosive, and every part thereof, at all times by day and night, but so as not to unnecessarily impede or obstruct the work therein, and make inquiries as to the observance of the Act, and all measures and things relating to the safety of the public or of the persons employed therein. And they may enter, inspect and examine any premises registered under the Act, and every part thereof in which any explosive is kept or is reasonably supposed by them to be kept at all reasonable times by day.

They may require the occupier of any such factory, magazine, store or premises, or any person employed therein to give them samples of any explosive or ingredient or substance,¹ paying therefor the market value thereof.²

FACTORY INSPECTORS.

This officer may, on producing, if required, the certificate of his appointment, (1) enter, inspect and examine at all reasonable times, by day and night, a factory³ and workshop, and every part thereof, when he has reasonable cause to believe that any person is employed therein, and by day any place which he has reasonable cause to believe is a factory or workshop; (2) take with him in either case a constable, if he has reasonable cause to apprehend serious obstruction; (3) require the production of documents kept in pursuance of the Act, and inspect, examine and copy the same; (4) make necessary examination and inquiry as to whether this and the Public Health Acts, have been complied with; (5) enter any school in which he has reasonable cause to believe that children employed in a factory or workshop are educated; (6) examine any person in such factory, etc., or school as to matters under the Act, and require them to sign a declaration of the truth of their statements; (7) exercise other necessary powers.⁴

These powers may be exercised whether or not the factory or workshop is used as a dwelling,⁵ but not as to retail bakehouses unless there is reasonable cause to believe that a child, young person or woman is employed therein.⁶ They may be extended (by

¹ 38 & 39 Vict. c. 17, s. 55; 46 & 47 Vict. c. 3, s. 8; and see *ante*, p. 96.

² 38 & 39 Vict. c. 17, s. 76.

³ *Rogers v. The Manchester Co.*, 1898, 1 Q. B. 344.

⁴ 41 & 42 Vict. c. 16, ss. 68, 70. This Act does not apply to workshops where no child, young person or woman is employed, s. 93 (except under sanitary provisions, which extend also to laundries—54 & 55 Vict. c. 75, ss. 1, 2),

nor to private house or room where straw-plaiting, pillow-lace, or glove-making is carried on—s. 97; or any trade where the labour is exercised at irregular intervals, and does not furnish the whole or principal means of living—s. 98. See 58 & 59 Vict. c. 37, s. 45.

⁵ 54 & 55 Vict. c. 75, s. 25.

⁶ 46 & 47 Vict. c. 53, s. 17; and see 54 & 55 Vict. c. 75, s. 37.

direction of the Secretary of State) to any place of public entertainment at which the employment of a child is for the time being licensed.¹

MINES INSPECTORS.

This officer² may (1) make such examination and inquiry as is necessary to ascertain whether the provisions of this Act are complied with; (2) enter, inspect and examine any mine and any part thereof at all reasonable times by day and night, but so as not to impede or obstruct the working of the mine; (3) examine and make inquiry respecting the state and condition of any mine or part thereof, ventilation, sufficiency of special rules and all measures and things connected with the safety of persons employed in or contiguous thereto, or the care and treatment of the horses and other animals used therein; (4) exercise all other necessary powers.³

MERCHANT SHIPPING INSPECTORS.

Every officer of the Board of Trade, commanding officer of any commissioned ship on full pay, consular officer, registrar general of seamen, chief officer of customs, and shipping master may, where he has reason to suspect that the provisions of the Merchant Shipping Act, or the laws relating to merchant seamen and navigation are not complied with, (1) require the owner, master or any of the crew of a British ship to produce any official log-books or documents, or a list of persons on board; (2) muster the crew; or (3) require the master to answer questions concerning the ship, crew or documents.⁴

Inspectors of the Board of Trade appointed to report (a) as to accidents to vessels; (b) whether the Act is complied with; (c) whether the hull or machinery of steamships are in good condition, may (1) go on board any ship and inspect the same or any of the machinery, boats, equipments, or articles on board thereof, not unnecessarily detaining her; (2) enter and inspect any premises necessary for the purpose of making his report; (3) and require the production of all books, papers, etc.⁵

The surveyors may board any passenger steamship at all reasonable times and inspect the same and all machinery, etc., certificates, thereof, not unnecessarily detaining her, and, if necessary, require the ship to be taken into dock for examination.⁶

¹ 57 & 58 Vict. c. 27, s. 6.

² As to the powers of Board of Trade Inspectors in case of boiler explosions other than in mines, see 45 & 46 Vict. c. 22, s. 6.

³ 50 & 51 Vict. c. 58, s. 41; 35 & 36 Vict. c. 77, s. 17, is to the like effect, which Act refers to metalliferous mines. An inspector under this latter Act may exercise the powers under the former Act if directed to do so by the Secretary

of State: 50 & 51 Vict. c. 58, s. 39. The decision of the Secretary of State that either of these Acts applies to any particular mine is final—s. 71.

⁴ 57 & 58 Vict. c. 60, ss. 629, 729.

⁵ Sect. 729. [As to explosives, see 38 & 39 Vict. c. 17, s. 58.]

⁶ Sect. 725. As to life-saving apparatus and as to lights and signals, see s. 4, and load-line s. 436.

Medical inspectors for the port may inspect the medicines, etc., three clear days, if reasonable notice be given by the master, before the ship leaves, and are to have all the powers of a Board of Trade inspector.¹ They may also inspect the provisions and water for ships going through the Suez Canal or round Cape Horn or the Cape of Good Hope.²

As to pilots, where pilotage is compulsory the pilot is liable for any damage caused by his negligence.³

RAILWAY INSPECTORS.

These officers may enter and inspect any railway, and all the stations, works, buildings, offices, stock, plant and machinery belonging thereto.⁴

WATER BAILIFFS.

Any water bailiff may, acting within the limits of his district, on production of the instrument of his appointment,⁵ examine any weir, dam, fishing-weir, fishing-mill, fixed engine or obstruction on any artificial water-course connected with any salmon river; stop and search on any salmon river any boat, etc., used in fishing which there is reason to suspect⁶ contains salmon, and seize any fish, instruments of fishing, or other articles forfeited in pursuance of the Acts; and search and examine all nets, etc., and other instruments used in fishing or carrying fish by persons reasonably suspected of having fish illegally caught, and seize all fish and other articles forfeited.⁷

Any light otter lathe or jack, wire or snare, spear, gaff, strokehall, snatch or other like instrument used for catching or killing salmon is forfeited,⁸ and roe as bait,⁹ nets of improper mesh,¹⁰ fixed engines in tidal waters,¹¹ or not removed within thirty-six hours after commencement of close season,¹² and nets used at the head-race or tail race of

¹ Sect. 202.

² Sect. 206. As to emigrants see ss. 289, 306. As to the powers of local sea-fishery officers, see 51 & 52 Vict. c. 54, ss. 2, 6.

³ See judgment of Lord Esher, M.R., in *R. v. City of London Court*, 1892, 1 Q. B. 285; 66 L. T. 135. As to inspection of chain cables and anchors, see 27 & 28 Vict. c. 27, s. 3.

⁴ 34 & 35 Vict. c. 78, s. 4.

⁵ This is a condition precedent to the exercise of the power; *Barnacott v. Passmore*, 19 Q. B. D. 75; 56 L. J. M. C. 99; 35 W. R. 812; and see *Cowler v. Jones*, 54 J. P. 660.

⁶ As to what is reasonable suspicion, see *ante*, p. 39.

⁷ 36 & 37 Vict. c. 71, s. 36, extended

to any fresh-water fish by 47 & 48 Vict. c. 11, s. 3, which applies these provisions to all waters frequented by such fish.

⁸ 24 & 25 Vict. c. 109, s. 11. A net is not a snare within this section: *Jones v. Davies*, 1898, 1 Q. B. 405; 78 L. T. 44. [See also 36 & 37 Vict. c. 71, s. 18.]

⁹ Sect. 9.

¹⁰ Sect. 10.

¹¹ Sect. 11.

¹² Sect. 20. The close time for bream, grayling, gudgeon, perch, pike and tench, is March to June; for salmon and trout, salmon, trout and char, September to January inclusive. [55 & 56 Vict. c. 50, s. 3.]

a mill, or below a dam where no fish pass,¹ or during close time,² and fish caught by such means, and unseasonable fish.³ Nets, stationary by mechanical contrivance, are fixed engines,⁴ but not if merely stretched across river by corks.⁵

Any one may destroy an illegal fixed engine,⁶ and in such case the person so destroying the engines is not liable to be proceeded against for damages.⁷

As to unseasonable fish, it is necessary to secure a conviction that the taker should know them to be such.⁸ But to take fish unlawfully they must be alive.⁹

While acting within their authority they are to have the same powers, privileges, and protection as constables.¹⁰

This officer and his assistants may arrest persons between the expiration of the first hour after sunset and the last hour before sunrise illegally taking or killing salmon, or found in or near a salmon river with intent,¹¹ or persons putting noxious material into a river with intent to destroy fish.¹²

They may require any person found fishing for salmon to produce his licence.¹³ A licence is required where a man uses any device by which salmon may be caught, and not only a device for the purpose of catching salmon.¹⁴

Thames.—On the river Thames any water bailiff may enter into any fishing boat or other vessel employed, or about to be employed, in fishing, and therein search for fish unlawfully taken, and any unlawful or prohibited net or apparatus for taking or destroying fish, and may seize any such fish, apparatus, etc.¹⁵

ALKALI WORKS INSPECTORS.

These officers may at all reasonable times by day and night, without notice, but so as not to interrupt the manufacture, enter and inspect any work to which the Act applies, and examine any process for the evolution, or condensation, or rendering harmless of noxious

¹ Sect. 12, and 36 & 37 Vict. c. 71, s. 17.

² 28 & 29 Vict. c. 121, s. 58; *Ruther v. Harris*, 1 Ex. D. 97.

³ 24 & 25 Vict. c. 109, ss. 14-21; 28 & 29 Vict. c. 21, s. 64; and 36 & 37 Vict. c. 71, ss. 19, 20; *Williams v. Long*, 57 J. P. 217.

⁴ *Gore v. The Special Commissioners*, L. R. 6 Q. B. 561; 40 L. J. Q. B. 252; *Olding v. Wild*, 14 L. T. 402.

⁵ *Watts v. Lucas*, 40 L. J. M. C. 73; L. R. 6 Q. B. 226; 24 L. T. 128; 19 W. R. 470; *Thomas v. Jones*, 34 L. J. M. C. 45; 18 W. R. 154; 11 L. T. 450; but see *Rawstone v. Backhouse*, 37 L. J. C.

P. 26; L. R. 3 C. P. 67; 17 L. T. 441; 16 W. R. 249.

⁶ 24 & 25 Vict. c. 109, s. 11.

⁷ *Williams v. Blackwall*, 8 L. T. 252; 32 L. J. Ex. 174; 11 W. R. 621.

⁸ *Hopton v. Thirlwall*, 9 L. T. 327; 12 W. R. 72.

⁹ *Gazard v. Cooke*, 55 J. P. 102.

¹⁰ 36 & 37 Vict. c. 71, s. 36.

¹¹ *Ibid.* s. 38; and see 47 & 48 Vict. c. 11, s. 3, *supra*.

¹² 24 & 25 Vict. c. 97, s. 32.

¹³ 28 & 29 Vict. c. 121, s. 37. This power is also vested in conservators.

¹⁴ *Lyne v. Leonard*, L. R. 3 Q. B. 156; *Watts v. Lucas*, 6 *ib.* 226.

¹⁵ 27 & 28 Vict. c. 113, s. 66.

gas, and any place where alkaline waste is treated, or any liquid containing acid is likely to come in contact with alkaline waste, and generally to ascertain whether the provisions of the Act are complied with.¹ They may apply tests and make experiments. And the owner must render assistance, and furnish on demand plans of any process.²

CANAL BOATS INSPECTORS.

The Inspectors appointed by the Local Government Board may enter any canal boat and generally exercise the same powers as inspectors of the local authority.³

MINISTER.

With regard to the office of minister, it should be premised that the freehold of churches and churchyards is in the rector or vicar,⁴ and in consequence he is entitled to the possession of the keys, and a duplicate obtained by a churchwarden has been ordered to be given up.⁵ "The minister has, in the first instance, the right to the possession of the key, and the churchwardens have only the custody of the church under him. If the minister refuses access to the church on fitting occasions, he will be set right on application and complaint to higher authorities."⁶ The possession of the church is in the minister and churchwardens, and no person has a right to enter it when it is not open for divine service except with their permission and under their authority.⁷ Subsidiary to this right is that of ringing the bells and playing the organ at, or before, or after divine service or otherwise. The consent of the incumbent is necessary in both cases.⁸

Every person is by the common law entitled to burial in the churchyard of the parish in which he died⁹ without any fee, unless there be a custom to pay such fee.¹⁰ But where a district which has a burial ground becomes a separate and distinct parish, there is no right of burial in the old parish.¹¹ The intervention of the High Court is confined to the enforcement of the common law right,¹² and does not extend to the mode of burial¹³ nor the spot at which it takes place.¹⁴

¹ 44 & 45 Vict. c. 37, s. 16, see 55 & 56 Vict. c. 30.

² Sect. 17. These works are required to be registered by s. 11.

³ 47 & 48 Vict. c. 75, s. 4, see *ante*, p. 101.

⁴ Phil. Ec. Law, 2nd ed., 1383.

⁵ *Dewdney v. Good*, 7 Jur. N. S. 763; *Ritchings v. Cordingley*, L. R. 3 Ad. & Ec. 113.

⁶ Per Sir J. Nicholl; *Lee v. Matthews*, 3 Cons. 173.

⁷ Per Sir J. Nicholl; *Jarratt v. Steele*, 3 Phil. 167; and see *Griffin v. Deighton*, 5 B. & S. 93; 33 L. J. Q. B. 29, 181.

⁸ Phil. 1519. See *Wyndham v. Cole* 1 P. D. 130.

⁹ *R. v. Taylor*, 7 Davy, 278 MS.

R. v. Coleridge, 2 B. & A. 806.

¹⁰ *Andrews v. Cawthorne*, Willes, 536. See *Wood v. Headingley*, 1892, 1 Q. B. 713; 40 W. R. 390.

¹¹ *Hughes v. Lloyd*, 22 Q. B. D. 157

37 W. R. 380.

¹² *R. v. Coleridge*, *ubi sup.*

¹³ *R. v. Taylor*, *ubi sup.*

¹⁴ *Prideaux, Churchwardens*, 16th ed. 364.

Connected with this subject is that of monuments and inscriptions. In the case of monuments, whether they are affixed to the wall or merely placed there as coats of arms are, the consent of the vicar or rector is necessary.¹ But if he remove them after being properly erected, "he is subject to an action to the heir and his heirs in the honour and memory of whose ancestor they were set up".² As to gravestones, no consent appears to be necessary for their erection.

With reference to inscriptions, "no person has a right to inscribe on a tombstone what his fancy may suggest, *e.g.*, if such inscription should impugn the doctrine or discipline of the Church of England . . . the inscription would be struck out".³ But the words "The Rev." before H. K., Wesleyan Minister, in an inscription, otherwise unobjectionable, was held not a sufficient justification for the incumbent refusing to allow the tombstone to be erected.⁴

It seems doubtful whether there is any obligation on the minister to perform the ceremony of marriage.⁵

CHURCHWARDENS.

It is the duty of churchwardens to enforce proper and orderly behaviour during divine service,⁶ and for this purpose they may direct in what particular seats, whether free or otherwise, persons shall sit.⁷ There is apparently no such duty when no service is being held.⁸ Pews belong to the parish for the use of the inhabitants, and cannot be sold or let but by special Act of Parliament. The churchwardens must exercise a just discretion in the allotment of pews.⁹ A pew can only be appropriated to a house by faculty or prescription. If allotted to an inhabitant who ceases to be such, he cannot let it with and thus annex it to his house.¹⁰ No power but the Legislature can deprive the inhabitants of a parish of their general right to be seated in the church;¹¹ and an action for damages will lie against these officers who refuse admission to a parishioner.¹² Neither can they dispossess any one of a sitting which he has enjoyed for a time, without giving notice of their intention and offering an opportunity for objection and explanation.¹³

¹ *Maidman v. Malpas*, 1 Hagg. Cons. 208; 2 Str. 1080. As to inspection of ancient monuments, see 45 & 46 Vict. c. 73.

² Co. Inst. 18 b.

³ *Breeks v. Wolfrey*, 1 Curt. 887.

⁴ *Keet v. Smith*, 4 A. & E. 398; 1 P. D. 73.

⁵ *Davis v. Black*, 1 Q. B. 900; *R. v. Moorhouse James*, 2 Dea. C. C. 1.

⁶ *Burder v. Selmes*, 1 Ec. & Ad. 114; *Burton v. Henson*, 10 M. & W. 105; *Hutchins v. Denziloe*, 1 Hagg. Cons. 170.

⁷ *Asher v. Calcraft*, 18 Q. B. D. 607; 56 L. J. M. C. 57; 56 L. T. 490;

35 W. R. 651; *Fuller v. Lane*, 2 Add. 425.

⁸ *Worth v. Torrington*, 13 M. & W. 781.

⁹ *Wyllie v. Mott*, 1 Hagg. Ec. 28.

¹⁰ *Ibid.*, 39, 34; *Halliday v. Phillips*, 1891, A. C. 228; 64 L. T. 745; *Stocks v. Booth*, 1 T. R. 428.

¹¹ *Astley v. Biddle*, 1 Hagg. Cons. 318, n.

¹² *Taylor v. Timson*, 20 Q. B. D. 671; 57 L. J. Q. B. 286.

¹³ *Horsfall v. Holland*, 6 Jur. N.S. 278. As to collections see *Howell v. Holdroyd*, 1897, P. 198.

These officers may apprehend any person guilty of riotous, violent or indecent behaviour in any church, chapel or churchyard during divine service or otherwise.¹ The disturbance must be wilful and intentional,² but includes the case of a person persisting in going to one part of the church when directed to sit in another,³ and may be committed by a clergyman.⁴

They may also arrest persons molesting any clergyman ministering or celebrating any sacrament or other divine rite or service.⁵ This does not apply to the case of a clergyman collecting alms after the service is over.⁶

They may pull off a man's hat irreverently worn.⁷ But before a person is assaulted he should be requested to retire.⁸

OVERSEERS.

Every overseer or relieving officer having knowledge that any person wandering at large within the parish is deemed to be a lunatic may apprehend such person and take him before a justice.⁹ If the officer is satisfied that it is necessary for the public safety or the welfare of an alleged lunatic with regard to whom it is his duty to take any proceedings under the Lunacy Act, that the alleged lunatic should, before any such proceedings can be taken, be placed under care and control, he may remove the alleged lunatic to the workhouse, where he may be detained for three days, or on a proper certificate for fourteen days¹⁰ or more.¹¹ Workhouse officers may receive chronic lunatics,¹² and within fourteen days of an escape they, or asylum officers, may retake an escaped lunatic.¹³

Paupers offending against the poor laws are deemed idle and disorderly under the Vagrant Act.¹⁴ These officers may take such offenders before justices without warrant, and, if required to do so, from thence to gaol, and while so acting, are to have all the powers and privileges of constables.¹⁵

Casuals cannot discharge themselves before 9 A.M. the second morning after admission, nor where admitted more than once in a month before the fourth morning, and during the interval they may be removed by these officers or a constable to the workhouse from the casual ward.¹⁶

¹ 23 & 24 Vict. c. 32, ss. 2, 3.

² *Williams v. Glenister*, 2 B. & C. 699.

³ *Asher v. Calcraft*, *ubi sup.*

⁴ *Vallancey v. Fletcher*, 1897, 1 Q. B. 265.

⁵ 23 & 24 Vict. c. 32, s. 2.

⁶ *Cope v. Barber*, L. R. 7 C. P. 393; *ante*, p. 110.

⁷ 41 L. J. M. C. 137; 26 L. T. 891.

⁸ 1 Hawk. P. C. c. 68, s. 29; and see *Reynolds v. Monkton*, 2 M. & R. 384.

⁹ *Ballard v. Bond*, 1 Jur. 7.

¹⁰ 53 & 54 Vict. c. 5, ss. 15, 20.

¹¹ Sect. 24.

¹² Sects. 25, 26.

¹³ Sect. 26.

¹⁴ Sect. 85.

¹⁵ 34 & 35 Vict. c. 108, s. 7; and see *ante*, p. 110.

¹⁶ *Ibid.*, s. 8.

¹⁷ 45 & 46 Vict. c. 36, s. 4.

District Surveyor (Metropolis).—Every building (other than public buildings), and every work done thereon is subject to the supervision of this officer.¹ He may at all reasonable times during the progress of the building or work enter and inspect the same,² or enter to see whether such building, etc., is exempt from the operation of the Act.³ Where the building has been erected without notice to him, he may enter and inspect within a month after discovery of the erection.⁴ Similar powers are conferred in the case of theatres, music-halls, etc.⁵

The following fees are payable :—

*For New Buildings.*⁶

Not exceeding 400 sq. ft. in area (including any attached building), nor more than two stories high	s.	d.
	30	0
For every additional story	5	0
100 ft. sq. or part thereof	2	6
No fee to exceed £10.		
Not exceeding 400 sq. ft. and 1 story high	15	0

For Additions or Alterations.

Made after roof covered in—half the fee charged in case of new building.

Inspecting arches or stone floors over or under public ways	10	0
„ openings in party walls	10	0
„ dangerous structures	20	0 ⁷

And special services may be charged for.⁸

¹ 18 & 19 Vict. c. 122, s. 31.

² Sect. 42.

³ Sect. 43.

⁴ Sect. 105.

⁵ 41 & 42 Vict. c. 32, s. 21.

⁶ Each must have a separate roof:

Moir v. Williams, 1892, 1 Q. B. 64; 66

L. T. 215.

⁷ 18 & 19 Vict. c. 122, Sched. II.

⁸ Sect. 50.

II. SCOTLAND.

1. WARRANTS AND ORDERS.

It seems that here in the case of all warrants, whether extract decrees or otherwise, the officer may break open shut and lock-fast places and not only rooms and presses after admission, but the outer door either of the debtor's dwelling-house or office or that of any other person wherein he has reasonable ground to believe that the debtor or his goods are concealed and, notwithstanding, it may be denied that he or they are there. But this does not apply to acts of warding or process caption.¹

As to time, execution on Lord's Day is void,² and it must not take place before sunrise nor after sunset, though it is sufficient if begun before sunset and finished with daylight.³

Where privilege exists, it may be claimed.

The death of the party at whose instance a warrant is granted annuls it. Any poiding or incarceration enforced thereafter is void.⁴

Poiding requires two witnesses, other executions one.⁵

1. OF SUPERIOR COURTS AT COMMON LAW.

MESSENGER-AT-ARMS.

Adjudication.—This is the process which answers apparently to *elegit* in England (then called "for debt")⁶ and possession (then called "in implement").⁷

In the first case it is not a private diligence, but one in which all the other creditors have an interest. In the latter, disobedience to the order is presumably a contempt.⁸

Arrestment.—This is the only method of attaching ships and boats and the goods in them. Where the vessel has masts the schedule is attached thereto, and where none to the stern posts. In the case of goods it is executed by delivering the schedule to the master. To move the article subject to arrestment is contempt, unless the arrest-

¹ Campbell Cit. & Dil. cap. xvi.
See *McLachlan v. Bell*, 23 R. 123.

² Stair IV. 17, 27.

³ Ersk. Inst. III. 6, 25; Mor. Dict.
3738.

⁴ *Stewart*, M. 8136.

⁵ *Camp. ubi sup.*

⁶ *Ante*, p. 67.

⁷ *Ante*, p. 78.

⁸ *Paterson's Comp.*

ment be *jurisdictionis fundandæ causa*.¹ If the debtor give caution, loosing of arrestment will issue.²

Meditatio Fugæ.—This writ which is now apparently confined to cases arising under the Debtor's Act³ goes to this officer. It may be executed on Sunday.⁴ But married women are not liable.⁵

Personal Poin ding.—This is the diligence for attaching moveable goods and effects in the debtor's possession during his lifetime.⁶ If there be resistance, the warrant can be endorsed for caption.⁷ It seems to be part of the messenger's duty to see that the extract decree is properly filled up.⁸ The old forms before the Personal Diligence Act are still usable, but no part of the expenses, except those of the extract, are exigible from the debtor or his estate.⁹

It is no bar to a poin ding that the goods have been previously arrested by another creditor, and the poin ding will be preferable as a complete diligence, while the other is only inchoate.¹⁰ But there must be no undue delay.¹¹

If the debtor or any person offer payment or the appraised value of the goods though less than the debt, the officer must stop the poin ding. He has no authority without express mandate to receive payment, and the debtor may have to pay over again. If there is no mandate, the money is put in a bank in the name of the creditor, and on delivery of the receipt the poin ding must stop. What has been done should be drawn up and signed by the officer and witnesses. The officer is entitled to poin d for the expenses.¹²

The stock of a partnership cannot be taken for a debt of an individual partner, nor joint property for a debt of one of the owners.¹³ But the circumstance of another person having a personal claim to a share in the articles will not prevent poin ding.¹⁴

Goods which have once been poin ded and sold cannot again be repoin ded for the debt of the same debtor.¹⁵

The poin ding is applicable to all kinds of moveables, with the exception of ships and boats and goods on board them. Effects in the actual possession of a debtor, as well as those belonging to him in the hands of a third party, of which the debtor remains constructively the possessor, may be taken. Moveables in the debtor's possession are presumed to be his property.¹⁶ If a third party claim them the officer may examine on oath, but should always ascertain

¹ *Craig v. Brunsgard*, 23 R. 500.

² *Camp. Cit. & Dil.*; and see 41 & 42 Vict. c. 79, *ante*, p. 79.

³ 45 & 46 Vict. c. 42; *Kidd v. Hyde*, 9 R. 803.

⁴ *Kempt*, M. 8554; *Wight*, M. 8558.

⁵ *Pitcairn v. Deans*, M. 13948.

⁶ 1 & 2 Vict. c. 114.

⁷ Sect. 6. See *ante*, p. 9.

⁸ *Camp.*

⁹ Sect. 8.

¹⁰ *Ferguson*, 9 R. 687.

¹¹ *Henderson v. Grant*, 23 R. 661.

¹² *M'Neil v. M'Murphy*, 3 D. 554.

¹³ *Fleming VII.* S. 92; 53 & 54 Vict. c. 39, s. 23.

¹⁴ *Learmont v. Darlington*, 1 D. 884.

¹⁵ *Fiddes v. Fife*, Bell's cases.

¹⁶ *Brown v. Fleming*, XIII. D. 373, No. 65.

the value. He then states the fact in his execution, and the Court determines the question of property.¹

It is not certain that bank-notes or money on the debtor's person may be taken.² Growing corn when ripe or approaching maturity may be, but not otherwise,³ and a green crop can probably not be taken when there is an agreement to consume it on the land. Machinery, which may be removed without injury, may be taken; but not debts. Goods may be, though another may have a temporary right to them, as furniture let to a tenant, but the pouncing cannot be made effectual by sale till the temporary right is at an end.

By 1503, c. 98, no horses, oxen or other goods pertaining to the plough are to be pounced in time of tillage where other moveable effects can be taken. Preventing the officer from pouncing such goods until he has searched for others is not deforcement.⁴ Time of tillage is from 15th October to 15th June, old style.⁵ The officer must search for, the debtor need not point out such other goods.

As to fraudulent assignments see 19 & 20 Vict. c. 79, ss. 111, 150; 56 & 57 Vict. c. 71, s. 26. By these sections *bona fide* purchasers for value are protected.

As to agricultural holdings by 46 & 47 Vict. c. 62, s. 27, a tenant six months in arrear of rent may be ejected, and by 49 & 50 Vict. c. 29, s. 3, a crofter a year in arrear. The landlord's hypothec in holdings over two acres is abolished.⁶ Tenants' improvements and fixtures⁷ are provided for as in the English Act.⁸

The Friendly Society, Companies and Railway Acts apply.⁹

By the Married Women's Property Act, 1881, the paraphernalia is not subject to the *jus mariti*, and therefore not affectable by creditors.¹⁰

As to taxes, see *ante*.¹¹

Where effects are liable to the hypothec for rent the landlord is entitled to stop the pouncing if attempted to be executed before the term of payment of the rent unless unobjectionable security for the whole rent be given, though that exceed the debt claimed.¹² After the term of payment it is sufficient if the poulder leave enough effects to pay the rent,¹³ because the landlord is then able to make his hypothec effectual. On the pouncing creditor paying or securing the rent, he is entitled to an assignment of the landlord's right.¹⁴ The general hypothec or that on stock lasts only for three months after the rent

¹ *Kincaid*, 14 S. 188.

² *Alexander*, 4 S. 439.

³ *Elder v. Allen*, 11 S. 902.

⁴ *Ld. Advocate v. Forgan*, Fac. Coll. App.

⁵ *Ersk. Inst.* III. 6, 22.

⁶ 43 Vict. c. 12.

⁷ 46 & 47 Vict. c. 62, s. 6.

⁸ Sect. 30. As to crofters and cotters,

see 49 & 50 Vict. c. 29, ss. 8, 9, and see *ante*, pp. 70, 72.

⁹ *Ante*, pp. 74, 75, and as to effect of winding-up, see 49 Vict. c. 23, s. 3.

¹⁰ 44 & 45 Vict. c. 21; *Ersk. Pples.* 66.

¹¹ P. 75.

¹² *Pringle v. Scott*, M. 6216.

¹³ *Hay v. Keith*, M. 6188.

¹⁴ *Crawford*, M. 10531.

falls due, but that on corn till the rent be paid.¹ Whether in case of a farm it extends to household furniture or agricultural implements is doubtful.²

If there be no payment the officer declares the goods to be the creditors, and orders them to remain in the same custody until warrant from the Court to sell.³ If not sold they are delivered to the creditor.⁴ The valuation should be accurate and the particulars minute.⁵ The effect of bankruptcy within sixty days, or four months after, is apparently to make all poundings rank *pari passu*.⁶

Pounding of the Ground.—This diligence proceeds on a *debita fundi*, and affects the moveables on the lands to which the debt attaches. The effect is to give the user a right to the rents, but he cannot in virtue of it assume the natural possession of the lands.

In a competition of pouncing of this kind the superior pouncing for unpaid feu duties and casualties will be preferred. And the collector of poor rates has a preference over any pouncing creditor.⁷ Where there is no such ground of preference the creditors rank *inter se*, not according to priority of pouncing, but of infetment, and if that is of the same day, then of citation.⁸ Though the moveables have been previously pounced by a personal creditor, if they have not been sold or carried off the lands, this diligence is still competent, and will give a preference to the real creditor, not only over the creditor of the landlord, but of the tenant, where such a creditor has pounced.⁹

The goods falling under it must be those of the owner or the tenants:¹⁰ other goods on the land are not subject to it.¹¹ By 1469, c. 36, the goods of tenants cannot be pounced for their landlord's debt to a greater extent than the amount of the term's rent due by the tenant or the arrears which may be due at the time.¹² Only those goods which are on the ground at the date of serving the summons¹³ and belong to the debtor¹⁴ are liable.

In order to ascertain the rents the officer may call for the tacks, and them failing take the tenant's oath thereon.¹⁵ If the rent be payable in grain he may ascertain the amount in money by the oaths of valuers according to the price at the time.

Third parties' claims are to be treated as under personal pouncing.

By 42 & 43 Vict. c. 40, s. 3, no pouncing of the ground not carried into execution by sale of the effects sixty days before sequestration shall be available in any question with the trustee, except for the interest of the current half-yearly term and arrears of interest

¹ See *Hepburn*, M. 6205.

² II. Bell Com. 29, 33.

³ *Kerly*, 5 D. 860; *Macvicar*, 19 D. 948; *Simpson*, 16 R. 131.

⁴ *M'Kinnon*, 4 Macph. 852.

⁵ *McKnight v. Green*, 13 S. 342.

⁶ 19 & 20 Vict. c. 79, s. 12.

⁷ *Property Investment Co.*, 15 R. 885.

⁸ *Athole Hydro Co.*, 13 R. 818.

⁹ II. Ross 442.

¹⁰ *Campbell's Trustees v. Paul*, 13 S. 237.

¹¹ *Edwards*, 11, 7, 1628.

¹² *Brown*, 22 D. 273.

¹³ *Urquhart*, 10 R. 991.

¹⁴ *Thomson*, 9 R. 430.

¹⁵ *Stair* II. 5, 9; IV. 17, 28.

for one year immediately before such term. By 50 & 51 Vict. c. 69, s. 2, this provision shall be applicable to all poinding of the ground by which moveables forming part of, or belonging to, a bankrupt estate, whether administered in Scotland or furth thereof, are sought to be attached or affected, and that whether the debts or securities in respect of which such poinding of the ground shall be brought, shall have been constituted or granted by the bankrupt or any ancestor or predecessor of the bankrupt, or by any other person. The effect of a summons executed after the trustee's confirmation was decided in favour of the poinder.¹

Process Caption.—This is used to compel the return of process which has been unduly or contumaciously retained by one of the parties.²

Removing of Tenants.—The officer here is empowered under the extract of lease or decree, as the case may be.³

Sequestration.—This is one of the remedies open to a landlord for rent. It may be diligence in execution or in security.

In the first case the warrant to the officer is to inventory and appraise the subjects of security and to sell so much as is required for payment of the rent due, with interest and expenses.

In the second case it is merely for payment on the arrival of the approaching term.

Warrants to sell are carried into execution at the sight of the clerk of the Court or other person authorised.⁴

Recall.—Letters of recall issue where the process is found to have been groundlessly laid on.⁵

2. OTHER THAN THOSE OF SUPERIOR COURTS AT COMMON LAW.

SHERIFF'S OFFICER.

The jurisdiction of the sheriff for the purposes of this work appears to be as great as that of the Court of Session, and therefore the duties of these officers are practically the same as those of messengers-at-arms. But they cannot act out of the shire unless the warrant be backed.⁶

In meditatione fugæ, however, the writ may be executed anywhere in the kingdom by this officer or by a messenger.⁷ As to Bankruptcy, see 19 & 20 Vict. c. 79, s. 88; and Debtors, 43 & 44 Vict. c. 34, s. 4.

¹ *Dick's Trustees*, 6 R. 586.

² *Watt v. Lighterwood*, 1 R. 21.

³ 16 & 17 Vict. c. 80, ss. 30, 31. As to agricultural holdings, see *ante*, p. 132.

⁴ A. S. 10, 7, 1839, s. 150.

⁵ 1 & 2 Vict. c. 114, s. 20.

⁶ S. 19. See *Kennedy*, 14 D. 513. As to Teinds, A. S. 4, 3, 1840.

⁷ 1 & 2 Vict. c. 119, s. 25.

Under the Small Debts Act the sequestration or poinding and sale shall be carried into effect by the officer in a summary way by getting the effects sequestered or poinded duly appraised by two persons, who may also be witnesses, and leaving an inventory thereof with the debtor, and not sooner than forty-eight hours thereafter carrying such effects to the nearest town or village or to the cross or most public place if in a town or village, and selling the same to the highest bidder by public roup, between 11 A.M. and 3 P.M., at such cross or public place, on previous notice of at least two hours by the crier (subject to alteration by the sheriff), or if the effects are not sold the same shall be delivered over at the appraised value to the creditor to the amount decerned for and expenses, if awarded, and the allowances. Any overplus is to be returned to the owner or consigned with the sheriff-clerk if such owner cannot be found. The officer may sell without a licence; ¹ one witness is sufficient.²

CONSTABLES.

The warrants and orders of justices in civil matters fall in this class.³

The powers under warrants of distress are to be executed as under the Small Debts Act, but must be backed in another county and can only be executed by these officers.⁴

As to recovery of tenements, see 1 & 2 Vict. c. 119, s. 11, by which the process is to have the same effect as decret of removing and warrant of ejection.

Burgh assessments in arrear may be recovered under warrant by which the collector or officers of the Court may poind, seize, remove and secure any goods or effects of the person in arrear, and after four days, unless payment be sooner made, may sell sufficient to raise the amount due, plus 10 per cent., and render the overplus to the owner. The sale is to be by auction, after three days' notice.⁵ Oppressive proceedings may be appealed against.⁶

Justices may by order authorise entry into unlicensed theatres ⁷ or places for baiting animals,⁸ and may verbally order arrest.⁹

A solicitor of an accused person may insist on being present at a preliminary inquiry.¹⁰

The Acts relating to explosives, petroleum, industrial schools, weights and measures, and returning officers apply.¹¹ The corresponding enactment relating to licensing is 25 & 26 Vict. c. 35, s. 20, and to lunatics 34 & 35 Vict. c. 55, s. 8.

¹ 7 Will. IV. & 1 Vict. c. 41, s. 20.

² Sect. 21.

³ See *Wilson v. McKellar*, 24 R. 254.

⁴ *Greene v. Proc. of Caithness*, II. Brown 554.

⁵ 55 & 56 Vict. c. 55, ss. 353, 355.

⁶ Sect. 354.

⁷ Sect. 402.

⁸ Sect. 405.

⁹ Hume II. 57; *Gillespie*, 24, 12, 1694.

¹⁰ 50 & 51 Vict. c. 35, s. 17; *Goodall*,

2 Wh. J. R. 1.

¹¹ See *ante*, pp. 85-87.

GAOLERS.

The persons committed under warrants of this class are in the like position to those in England.¹

POOR INSPECTORS.

The powers for the recovery of poor-rates are the same as those relating to taxes,² and on bankruptcy they are entitled to preferential payment.³

As to the power to deal with lunatics, see 25 & 26 Vict. c. 54, s. 14, by which the sheriff may make an order for their reception and detention in an asylum, lunatic ward, or private house.⁴

RATE COLLECTORS.

In counties the highway assessments may be recovered in the same mode as taxes,⁵ or in the small debt court⁶ in burghs as police assessments,⁷ and on bankruptcy are entitled to preferential payment.

LOCAL OFFICERS.

Infected persons may under order be removed to hospital,⁸ and school-board officers may under order enter premises where it is suspected that a child is employed.⁹

ROAD SURVEYORS.

Justices may order fences to be pruned in default by the occupier and grant licence to take materials for roads.¹⁰

EXPLOSIVES AND WEIGHTS INSPECTORS.

These Acts apply.¹¹

WATER BAILIFFS.

The sheriff or a justice may grant a warrant to search premises at any time mentioned therein, and seize all illegal nets and other instruments. It continues in force for a week.¹²

3. ORDERS OF LOCAL AUTHORITIES.

Local Acts.—Under such an Act it has been held that the offence must be specific.¹³ Where a penalty was imposed on riotous or disorderly behaviour, this was held to include throwing pease-meal

¹ *Ante*, p. 87.

² *Ante*, p. 80.

³ 8 & 9 Vict. c. 88, s. 88.

⁴ See *Strang*, 11 D. 378.

⁵ As to county rates, see 52 & 53 Vict. c. 50, s. 62 and 51 & 52 Vict. c. 62.

⁶ 41 & 42 Vict. c. 51, s. 85.

⁷ Sect. 86; 57 & 58 Vict. c. 58, s. 29.

⁸ 60 & 61 Vict. c. 38, ss. 49, 54.

⁹ 41 & 42 Vict. c. 78, s. 12.

¹⁰ *Ibid.* c. 51, s. 123 sch. C.

¹¹ *Ante*, pp. 87, 89.

¹² 31 & 32 Vict. c. 123, s. 26.

¹³ *Ritchie v. M'Phee*, 10 R. 9.

or soot.¹ To be convicted of "frequenting," a person must be seen at the place more than once.² And a penalty on a prostitute importuning in or near a street was held not to apply to the window of her house.³

Bye-laws.—Where a road authority made a general bye-law that no waggon attached to a locomotive should carry more than five tons, it was held *ultra vires*, and confirmation by the Secretary of State did not make it valid,⁴ and so was one prohibiting the affixing of placards to walls and fences without consent of the owner and occupier.⁵

Highways.—The local authority are authorised to use adjoining ground as a road and may authorise persons to seize timber, stones, etc., left on the road, and remove encroachments and fence unfenced pits at expense of owner, and seize animals pasturing on roadsides and close unused ways or roads temporarily for repair.⁶

Public Health.—A nuisance under this Act is a dwelling, well or pool, injurious stables, etc., in which animals are improperly kept, accumulations of filth, injurious or offensive works or factory, house overcrowded, school-house or factory dirty, not ventilated or overcrowded, fireplace in works not consuming its own smoke or sending forth smoke injuriously, or crowded cemeteries.⁷

The local authority may enter in case of nuisance between 9 A.M. and 6 P.M., or at any hour when the work is going on.⁸ They may do necessary work in default by owner or occupier,⁹ and sell any articles removed by public roup, after not less than five days' notice, except where delay prejudicial to health, or value under £2, when sheriff or justice may order immediate sale. Surplus to go to owner.¹⁰ And enter to replace foul sewers by owners,¹¹ and enter slaughter-houses or knackers' yards at any hour by day or when business in progress,¹² and purify houses in a filthy state.¹³

The medical officer or sanitary inspector or veterinary surgeon appointed may at all reasonable times enter any premises and search any cart or vehicle, or any barrow, basket, sack, bag or parcel, to inspect and examine (a) any animal alive or dead, intended for the food of man, which is exposed for sale or deposited in any place, or is in course of transmission for the purpose of sale or of preparation for

¹ *Stephenson v. Lang*, 4 Coup. 76.

² *Linton v. Clark*, 15 R. J. C. 25.

³ *Ford v. Linton*, 6 R. 49.

⁴ *Smart v. Cadenhead*, 1 Ad. 474.

⁵ *Eastburn v. Wood*, 19 R. J. C. 100.

⁶ 41 & 42 Vict. c. 51, s. 128. See

Ainslie v. Stewart, 2 D. 141. This applies now *semble* to main roads; 52 & 53 Vict. c. 50, ss. 11, 16.

⁷ 60 & 61 Vict. c. 88, s. 16.

⁸ Sect. 18.

⁹ Sect. 26.

¹⁰ Sect. 27.

¹¹ Sect. 28.

¹² Sect. 33.

¹³ Sect. 40.

sale; (b) any article, whether solid or liquid, intended for the food of man, and sold or exposed, etc., as aforesaid. And if apparently unfit for sale, may seize and carry away the same by himself or his assistant, in order to have the same dealt with by a justice. But in the case of a live animal, if the officer is not a qualified veterinary, he must be accompanied by one.¹ Police are to have the same power.

The local authority may inspect any premises where infectious disease is supposed to exist,² and cleanse and disinfect the same,³ and bedding.⁴ The medical officer may inspect dairies, and the local authority may prohibit the supply of milk.⁵

Tents and vans not properly kept are a nuisance under the Act,⁶ and the Infants' Life Protection Act applies generally.⁷

The authority are to see to the execution of regulations in the case of epidemics,⁸ and may enter to carry them out,⁹ and customs and coast-guard officers are to assist.¹⁰

They may remove sick persons in common lodging-houses to a hospital,¹¹ such houses to be open to the officers at all times.¹²

They may carry sewers through private lands,¹³ and if necessary, enter to make plans of premises for the purposes of sewers or drains.¹⁴

If they fail in their duty the Local Government Board may make the necessary order.¹⁵ Persons damaged are to be compensated.¹⁶

Under the Burgh Police Act the commissioners may alter obstructions or projections,¹⁷ and may make drains in enclosed lands,¹⁸ or re-make unauthorised drains,¹⁹ or enforce proper drainage,²⁰ and repair drains or cesspools in default of owner,²¹ and remove dangerous buildings.²²

The inspector of cleansing or medical officer may inspect drains and cesspools²³ and houses in a dirty state where entry not objected to,²⁴ and inspect slaughter-houses.²⁵

The fire brigade in burghs may enter, and if necessary break into any building on fire or building or land adjacent or near, to do what is necessary to extinguish the fire, and any damage is to be deemed

¹ Sect. 48.

² Sect. 45.

³ Sect. 47.

⁴ Sect. 48.

⁵ Sect. 60.

⁶ Sect. 73.

⁷ See *ante*, p. 100.

⁸ Sect. 81.

⁹ Sect. 82.

¹⁰ Sect. 85.

¹¹ Sect. 96.

¹² Sect. 98. See *Gunn v. Cadenhead*, 15 R. J. C. 57.

¹³ Sect. 108.

¹⁴ Sect. 109.

¹⁵ Sect. 146.

¹⁶ Sect. 164. Constables are to assist in carrying out the act, s. 169.

¹⁷ 55 & 56 Vict. c. 55, s. 158.

¹⁸ Sect. 219.

¹⁹ Sect. 227.

²⁰ Sect. 219.

²¹ Sect. 238.

²² Sect. 191. As to the powers of the Dean of Guild, see 3 & 4 Will. IV. c. 76, ss. 19-22; 31 & 32 Vict. c. 108, s. 10; and *Wilson v. Mackay's Trustees*, 23 R. 13.

²³ 55 & 56 Vict. c. 55, ss. 243, 254.

²⁴ Sect. 118.

²⁵ Sect. 280.

damage caused by fire,¹ and the senior officer may, in case of fire, cause the street to be barred.²

Any chief constable or constable appointed for the purpose, or inspector of weights and measures, may at all reasonable hours enter any building or other place in which any article is sold or exposed for sale, or stop any cart or carriage, or any person carrying or in charge of any basket, from which such articles are sold or exposed for sale in a street, public or private, and require such articles to be weighed, measured or numbered.³

The *Adulteration, Diseases of Animals and Explosives Acts* apply.⁴

¹ Sect. 298.

² Sect. 295.

³ Sect. 480.

⁴ *Ante*, pp. 94-96.

2. INHERENT POWERS.

CONSTABLES.

Arrest.—The power of a constable to arrest here is confined to breaches of the peace or threat of violence in his presence,¹ drunkenness, Sabbath-breaking and swearing,² and to those offences specified below. Breach of the peace extends to a party casting off his clothes in the street and making noise and disturbance,³ and to persons obstructing, interrupting and disturbing a public meeting,⁴ but abusive words merely are not sufficient.⁵

The following statutes apply: Diseases of Animals, Explosives, Hawkers, Indecent Advertisements, Gun, Merchant Seamen, Pedlars and Post.⁶

The power under the Cruelty to Animals Act is the same as in England, the offences being those specified in ss. 3, 7-9 and 13.⁷ The definition of "animal" is the same, and includes cocks and other domestic fowl or birds. And cock-fighting is an offence.⁸

As to escape see *ante*.⁹

As to highways any person witnessing the commission of an offence may seize and detain the offender. The offences are: ¹⁰ Driving cart without a name,¹¹ or under false name,¹² or sitting in chaise, or carter riding,¹³ or occasioning hurt, preventing passage, or not dismounting when required,¹⁴ or driving alongside, or horses without bridle,¹⁵ or leaving vehicle or not keeping to the left.¹⁶

These officers or any persons witnessing the commission of offences may arrest unknown offenders.¹⁷

Riding on footpaths, leading carriages or animals thereon, wilfully obstructing highway or damaging fences or bridges, bars or erections, or injuring or displacing tools, trestles, bars, stones, or materials, hauling otherwise than on

¹ 1661 c. 38; *Peggie v. Clerk*, 7 M. 89; *Deakin v. Milne*, 10 R. J. C. 22.

² See *Smith Reparation*, 253.

³ *Ainslie*, 1 Brown 25.

⁴ *Hendry v. Ferguson*, 10 R. J. C. 63; *cf. Armour v. Macrae*, 13 ib. 41.

⁵ *Banks*, 3 Coup. 359.

⁶ *Ante*, pp. 107-112.

⁷ *Ante*, p. 106.

⁸ 13 & 14 Vict. c. 92, ss. 1-4, 6, 11; 58 Vict. c. 13. As to cruelty, see *Cornelius v. Grant*, 7 R. J. C. 13; *Jack v. Campbell*, 8 ib. 1.

⁹ P. 107.

¹⁰ 12 Geo. III. c. 45.

¹¹ Sect. 2.

¹² Sect. 4.

¹³ Sect. 5.

¹⁴ *Ib.*

¹⁵ Sects. 6, 7.

¹⁶ Sect. 8. This act applies now *semble* to other than main roads.

¹⁷ 41 & 42 Vict. c. 51, ss. 123, 124.

This applies now *semble* to main roads. As to bicycles, see 52 & 53 Vict. c. 50, s. 58.

a carriage, or suffering timber, etc., to trail, or going on road or sides while ploughing adjacent land, or slaughtering animals on the road or sides, or allowing load other than hay or straw to project more than 30 inches from side of carriage, or 1 foot from the wheels or so as to obstruct or impede passage, or carrying timber more than 25 feet long on carriage not having more than two wheels, or hawkers, etc., pitching tents on sides, or blacksmiths, etc., after twilight not closing shops so as to prevent light being dangerous to travellers, making bonfires or discharging fireworks within 100 feet of centre of road, or fire-arms, flying kites, baiting bulls, or playing games to annoyance of passengers, or leaving waggons, etc., without proper custody longer than necessary, except in case of accident, and at such time or during time of refreshment not placing as near one side as may be, or laying timber, etc., on the sides or footpaths, or hanging clothes on fences, or suffering offensive matter to flow from houses or lands, or allowing pigs to root up or damage road or fences or copse on sides, or after blocking waggon going up-hill leaving block, or damaging lamps or lamp-posts, or extinguishing lights.

Drivers riding and not holding reins, or leaving vehicle without some person to guide, or allowing dog attending them to be at large, or not keeping left side on meeting or being overtaken, or wilfully preventing passing. One driver with two carts not having second fastened to first. Allowing children to drive.

Owners' names are to be painted on carts, etc.

Animals pasturing or straying may be seized.

As to licensing persons refusing to quit licensed premises may be arrested,¹ or found drunk or drinking in any shebeen,² or drunk and incapable in any street or public place.³

As to the liability where a charge is preferred by another person.⁴

Vagabonds are described in Scots Act of Parliament. They are persons between fourteen and seventy, wandering, idle persons using unlawful plays, Egyptians and seers, and persons able to work feigning hurt or having no master or lawful occupation, giving no satisfactory account of themselves, and songsters and labourers fleeing work.⁵ And persons again becoming chargeable or deserting family.⁶

Section 4 of the Vagrant Act applies.⁷

Burgh.—Any person found committing any offence punishable either by indictment or criminal libel or upon summary conviction under the Burgh Police Act or any other Act under which the magistrate has jurisdiction⁸ may without a warrant be taken into custody by any constable.⁹

The offences are: damaging lamps,¹⁰ removing offensive matter at improper time,¹¹ wilfully or indecently exposing person, occupiers suffering breach of the peace or riotous or disorderly conduct, or refreshment-house keepers knowingly harbouring persons of bad fame, publishing, writing or singing indecent books or matter or songs, refreshment-house keeper knowingly suffering constable to remain except to quell disturbance, or supplying liquor to him, affixing or delivering or sending through the post indecent printed or written matter, refreshment places open before 5 A.M. or after 12 P.M., cruelty to animals, altering or defacing name or address on articles without authority of owner, riotous, violent

¹ 25 & 26 Vict. c. 85, s. 21.

² Sect. 19.

³ Sect. 23.

⁴ See *Beattie v. McLellan*, 8 D. 990.

⁵ 1579, c. 74.

⁶ 8 & 9 Vict. c. 83, ss. 79, 80.

⁷ 54 & 55 Vict. c. 69, s. 7; see *ante*, p. 110.

⁸ As to local acts, see *ante*, p. 136.

⁹ 55 & 56 Vict. c. 55, s. 476.

¹⁰ Sect. 100.

¹¹ Sect. 125.

or indecent conduct, committing nuisance or using obscene language, drunk while in charge of cattle, horse, carriage or steam engine, or in possession of firearms, threatening behaviour, destroying advertisements, fire-plug notices or bye-law boards or drinking fountains or troughs, or printing or circulating sham bank-notes.¹

Or in any street (which includes all public places) committing any of the offences specified in the Town's Police Act,² or suffering dangerous animal to be at large, exposing stallion or bull while serving, improper driving, obstructing by not keeping near side, improperly conveying long or sharp-pointed articles, or goods not secured, carrying about advertisements to the annoyance of the residents or passengers, conveying slaughtered animals uncovered, being drunk and incapable and not under proper care, annoying any person, discharging smoke or steam other than from the top of buildings, bakers carrying board or basket, or chimney-sweeps ladders, besom or sack on foot-pavement except for the purpose of crossing, carrying any basket so as to obstruct foot-pavement except on crossing, conducting any wheeled vehicle on footpath, except perambulator or invalid carriage, vendors of articles shouting or making noise after being requested by a constable or inhabitant to desist, accumulating offensive matter, throwing orange-peel on footpath, having explosives to the danger of any person, riding on vehicles without authority of person in charge, affixing sign-boards without authority, owners not having name on cart or carriage, or permitting children under fourteen to drive, leaving holes unfenced and unlighted at night, loitering on footways to the annoyance of passengers.³

Or two or more betting in any street,⁴ or committing offences against bye-laws,⁵ or practising games of hazard,⁶ or being a vagrant,⁷ or known or reputed thief,⁸ or permitting young persons to beg, or young persons begging,⁹ or not reporting goods found to police office,¹⁰ or retailers of coals refusing to weigh the same,¹¹ or of hay or straw,¹² or exposing infected animals,¹³ and persons found in gaming-houses.¹⁴

County.—The power here is apparently so far as applicable the same as above.¹⁵

Entry.—Constables may enter inns, public-houses, and if breach of certificate is suspected, grocers' premises and eating or refreshment houses, boats, etc., where food or drink is sold for consumption.¹⁶

Burgh.—And places of dramatic entertainment, dancing saloons, fish or coffee shops, victualling houses, common brothels or places frequented by thieves and loose persons, or premises where a licence is required, and any ship or vessel not belonging to H.M. service,¹⁷ and gaming houses,¹⁸ and they may retain possession of premises where a fire has occurred until twenty-four hours after the circumstances have been reported to the burgh prosecutor.¹⁹

¹ Sect. 380.

² *Ante*, p. 115.

³ Sect. 381.

⁴ Sect. 393. *Bonnar v. Walker*, 23

R. J. C. 89.

⁵ Sect. 385.

⁶ Sect. 406.

⁷ Sect. 408.

⁸ Sect. 409.

⁹ Sect. 410.

¹⁰ Sect. 412.

¹¹ Sect. 420.

¹² Sect. 426.

¹³ Sect. 428.

¹⁴ Sect. 407.

¹⁵ See 20 & 21 Vict. c. 72.

¹⁶ 25 & 26 Vict. c. 35, s. 13.

¹⁷ 55 & 56 Vict. c. 55, s. 401.

¹⁸ Sect. 407.

¹⁹ Sect. 297.

Seizure.—There is general power to seize carts, etc., of offenders under the Cruelty to Animals¹ and Highways Act.²

The Diseases of Animals, Explosives, Game and Gun Acts apply.³

Burgh.—These officers may impound cattle,⁴ and seize carts conveying furniture,⁵ and property in possession of offenders,⁶ and remove articles placed in the street,⁷ and seize dogs that are a nuisance or straying,⁸ or infected animals,⁹ or articles which are for sale and false as to weight, measure or number.¹⁰

Bail.—The power is practically as in England.¹¹

GAOLERS.

Civil prisoners are treated specially under rules.¹²

The DISEASES OF ANIMALS, CRUELTY TO ANIMALS, EXPLOSIVES, FACTORIES, MINES, MERCHANT SHIPPING, RAILWAY AND ALKALI Acts apply.¹³

WATER BAILIFFS.

These officers may arrest (and so may any one) persons fishing during close periods for salmon except with rod and line or with rod and line contrary to bye-laws, or at other times using nets of improper mesh or setting engines or preventing salmon passing the fish pass.¹⁴

They may search boats, tackle, nets or other engines and receptacles at sea or on shore suspected to contain salmon illegally taken, and seize salmon in possession of persons not having the right to fish,¹⁵ and examine any dam, weir, cruive or fixed engine and seize all forfeited articles.¹⁶ They are not entitled to search a person who may be suspected of being guilty of illegal fishing unless they have previously apprehended him.¹⁷

They may enter and remain on lands in the vicinity of a river or the coast at any hour of the day or night for the purpose of executing the Acts. But they must leave on request of the owner or occupier unless they have reason to apprehend that a breach of the law is about to be committed.¹⁸

POOR INSPECTOR.

As to the power to deal with lunatics, see 25 & 26 Vict. c. 54, s. 14.¹⁹

¹ 18 & 14 Vict. c. 92, s. 9.

² 12 Geo. III. c. 45.

³ *Ante*, pp. 118, 119.

⁴ 55 & 56 Vict. c. 55, s. 386.

⁵ Sect. 388.

⁶ Sect. 468.

⁷ Sect. 383.

⁸ Sects. 389, 390.

⁹ Sect. 428.

¹⁰ Sect. 430.

¹¹ Sect. 471, and 20 & 21 Vict. c. 72, s. 13.

¹² 40 & 41 Vict. c. 53, ss. 29, 71.

¹³ *Ante*, pp. 121-125.

¹⁴ 81 & 82 Vict. c. 128, s. 29; 9 Geo. IV. c. 39, s. 11. (As to freshwater fish, see 8 & 9 Vict. c. 26, s. 4; *Roger v. Hislop*, 6 R. J. C. 16.)

¹⁵ Sect. 25.

¹⁶ Sect. 28. 25 & 26 Vict. c. 97, s. 26; *Mauchline v. Stevenson*, 5 R. J. C. 21; *Wemyss v. Zeland*, 18 R. 126.

¹⁷ *Jackson v. Stevenson*, 24 R. J. C. 88.

¹⁸ Sect. 27. Close time is fixed locally by bye-law.

¹⁹ *Ante*, p. 136.

III. IRELAND.

1. WARRANTS AND ORDERS.

1. OF SUPERIOR COURTS AT COMMON LAW.

THE powers here so far as regards the Sheriff, Tipstaff, Gaoler and Admiralty Marshal are practically the same as in England.¹ The differences are there pointed out.

2. OTHER THAN THOSE OF SUPERIOR COURTS AT COMMON LAW.

THE SHERIFF.

Committal.—Warrants of committal in the County Court fall in this class when they issue by way of process and not punishment.²

Execution on Goods.—Civil bill decrees on goods can only be executed between sunrise and sunset.³ Priority of writs of Superior and County Courts is determined by the time of lodgment at the under-sheriff's office.⁴

The officer cannot seize nor take in execution under this process or warrant of a justice any growing crops, trees, shrubs, plants or vegetables which are not severed from the land.⁵ Nor terms of years nor any estate or interest in land.⁶ Nor wearing apparel and bedding to the value of £5.⁷ The Friendly Societies Act applies.⁸

A civil bill decree is an execution within 9 Anne.⁹

Cattle, etc., seized are not to be driven more than five miles, and must be sold to the highest bidder between 10 A.M. and 4 P.M.¹⁰

Generally no sale is to take place until the end of three days following that on which execution is taken unless the goods are perishable, or upon request of the defendant, and proper persons are to be appointed for keeping possession.¹¹ The under-sheriff or bailiff may sell without an auctioneer.¹²

¹ See *ante*, pp. 66-81.

² *Ante*, p. 82.

³ 14 & 15 Vict. c. 57, s. 148.

⁴ 27 & 28 Vict. c. 99, s. 24.

⁵ 26 & 27 Vict. c. 62, s. 2.

⁶ 27 & 28 Vict. c. 99, s. 29.

⁷ 14 & 15 Vict. c. 57, s. 125.

⁸ *Ante*, p. 74.

⁹ *Ante*, p. 75.

¹⁰ 14 & 15 Vict. c. 57, s. 147.

¹¹ 27 & 28 Vict. c. 99, s. 28. (As to attachment of goods in local courts, see 18 & 14 Vict. c. 73, s. 9.)

¹² Sects. 27, 80.

Possession.—No writ is to be executed on Christmas day or Good Friday, nor after the commencement of two hours next before sunset and before sunrise and 6 o'clock, whichever shall be latest.¹

Possession may be delivered without the removal of under-tenants or occupiers.²

Replevin.—This still exists in Superior and County Courts.³ On proper security by the claimant the officer may, if the goods are not given up on demand, break open the outer or inner doors for the purpose of delivering them to the claimant.⁴

TIPSTAFF.

As to the powers of this officer, see 35 & 36 Vict. c. 57, ss. 5, 11. In case of imprisonment, the period thereof must appear on the warrant.⁵

CONSTABLES.

The powers of these officers are practically as in England.⁶

The Explosives, Petroleum and Returning Officers Acts apply.⁷ The corresponding enactments relating to lunatics is 38 & 39 Vict. c. 67, s. 4; industrial schools, 31 & 32 Vict. c. 25, s. 12; and revising barristers, 13 & 14 Vict. c. 69, s. 57.

As to recovery of tenements, warrants are not to be executed on Sunday, Good Friday or Christmas day, nor except between 9 A.M. and 4 P.M.⁸

They may be required to assist in the execution of civil bill decrees.⁹

WEIGHTS INSPECTORS: EXPLOSIVES.

These Acts apply.¹⁰

GAOLERS.

The powers of these officers are prescribed by rules.¹¹

RATE COLLECTOR.

The powers of collectors of county cess are regulated by 6 & 7 Will. IV. c. 116, s. 152, and 13 & 14 Vict. c. 82. And these officers collect the poor rates in the same manner.¹² They may levy by distress and sale any goods found on the premises (except such as are exempt from distress for rent), rendering the overplus to the

¹ 11 & 12 Vict. c. 47, s. 1; 27 & 28 Vict. c. 99, s. 19.

² 9 & 10 Vict. c. 111, s. 8; 23 & 24 Vict. c. 154, ss. 94, 96.

³ 16 & 17 Vict. c. 118, s. 229.

⁴ 14 & 15 Vict. c. 57, s. 43 *et seq.*

⁵ *In re Byrne*, 6 Q. B. Ir. 455; *In re Aikin*, 8 L. R. Ir. 50.

⁶ *Ante*, pp. 84-87.

⁷ *Ante*, pp. 85, 86.

⁸ 14 & 15 Vict. c. 92, s. 15; 34 & 35 Vict. c. 76, s. 10; 23 & 24 Vict. c. 154, ss. 84-86. See *Blue v. Fullerton*, 10 C. L. Ir. 238.

⁹ 27 & 28 Vict. c. 99, s. 28.

¹⁰ *Ante*, pp. 87, 89.

¹¹ 40 & 41 Vict. c. 49, s. 47.

¹² 1 & 2 Vict. c. 56, s. 78; 25 & 26 Vict. c. 88, s. 18; 61 & 62 V. c. 87, s. 27.

owner after deducting expenses not exceeding 1s. in the £.¹ On bankruptcy they are entitled to preferential payment.²

WATER BAILIFFS.

The justices may grant a warrant to these officers to enter suspected places at any time of the day or night mentioned therein. It is not to continue in force more than a week.³

3. ORDERS OF LOCAL AUTHORITIES.

Local Acts and Bye-laws are the same in effect as in England.⁴

Public Health.—A nuisance under this Act⁵ is premises in an unhealthy state, foul pools and ditches, animals improperly kept, houses overcrowded, factories, etc., not properly kept, fireplaces in works not consuming their own smoke and chimneys giving forth black smoke.

The sanitary authority may make sewers through private lands,⁶ enforce drainage of houses⁷ and paving private streets,⁸ regulate line of buildings,⁹ enforce privy accommodation,¹⁰ examine drains, etc., on complaint,¹¹ purify houses¹² or remove filth where order neglected,¹³ carry water mains through private lands,¹⁴ enforce water supply,¹⁵ close polluted wells¹⁶ and cellar dwellings after two convictions,¹⁷ inspect common lodging-houses¹⁸ and to ascertain nuisances,¹⁹ inspect meat and provisions²⁰ and cause premises to be disinfected,²¹ and enter to carry out regulations of Local Government Board.²² The police may act in certain cases,²³ and ships are to be subject to same rules as houses.²⁴

Under order of a justice, they may abate a nuisance,²⁵ or destroy unsound meat,²⁶ or remove infected persons to a hospital.²⁷

The *Adulteration, Diseases of Animals, Explosives and Weights Acts* apply.²⁸

¹ 6 & 7 Will. IV. c. 116, s. 152; 13 & 14 Vict. c. 82.

² 35 & 36 Vict. c. 48, s. 59.

³ 5 & 6 Vict. c. 106, s. 65.

⁴ *Ante*, p. 92.

⁵ 41 & 42 Vict. c. 52, s. 107. (See s. 28, and *Daly v. Webb, ante*, p. 100. 59 & 60 Vict. c. 54.)

⁶ Sect. 18.

⁷ Sects. 25, 26.

⁸ Sect. 28.

⁹ Sect. 29.

¹⁰ Sects. 45, 48.

¹¹ Sect. 51.

¹² Sect. 56.

¹³ Sect. 59.

¹⁴ Sect. 64.

¹⁵ Sect. 72.

¹⁶ Sect. 79.

¹⁷ Sect. 86.

¹⁸ Sect. 96.

¹⁹ Sects. 107, 108, 118.

²⁰ Sect. 132. See 53 & 54 Vict. c. 59, s. 28, and *Daly v. Webb, ante*, p. 100.

²¹ Sect. 137.

²² Sects. 151, 271.

²³ Sect. 122.

²⁴ Sect. 126. As to compensation, see s. 274.

²⁵ Sects. 112, 113, 130.

²⁶ Sect. 133.

²⁷ Sect. 141. As to infant life protection, see *ante*, p. 100.

²⁸ *Ante*, p. 95, 96, 104.

2. INHERENT POWERS.

CONSTABLES.

Arrest.—The law as to brawling, breach of the peace, cruelty to animals, drunkenness, escape, diseases of animals, explosives, hawkers, indecent advertisements, guns licensing, merchant seamen, pedlars and post is the same as in England.¹

As to highways, unknown offenders may be arrested,² obstructing surveyor,³ turning cattle loose, or urging dog to worry, or by ill-driving, causing mischief,⁴ flying kites, playing games or letting off fireworks, leaving vehicle, slaughtering beast or leaving carcass, laying timber, etc., or allowing to remain longer than necessary, hooping, or scalding casks, or binding wheels, or winnowing corn, suffering ferocious dog to be unmuzzled within fifty yards of road, drying flax, burning bricks or lime, or making fires, driving vehicles with goods projecting over the sides, exposing cattle for show, or allowing beasts to wander, drivers carrying more than the number allowed,⁵ or sitting on luggage of cabs, or not having number allowed painted on cab, or misbehaving, or leaving their horses; or those of carts, etc., driving more than one not secured to the other,⁶ or riding without conducting unless another person in charge, or not having proper control, or refusing to give name of owner, or not keeping near side,⁷ or led horse on far side, or interrupting free passage, or riding furiously, or children driving.

As to licensing they may remove persons found between 11 P.M. and 2 P.M. Sunday and 7 A.M. other days, tippling or gaming,⁸ or in prohibited hours, and arrest those offering resistance,⁹ or if illegal assembly there held,¹⁰ or persons drunk in refreshment house or wine retailer's,¹¹ or persons on premises in closing hours refusing to give name and address.¹² And persons drunk and incapable on the highway may be detained.¹³

As to vagrants the power is contained in 10 & 11 Vict. c. 84, s. 4, by which they may arrest persons found offending. The offences are not maintaining family¹⁴ and begging in public places.¹⁵ And section 4 of the Vagrant Act applies.¹⁶

¹ *Ante*, pp. 105-112. As to tipplers and gamblers, see 5 Geo. IV. c. 102, ss. 16-18.

² 14 & 15 Vict. c. 92, s. 14.

³ Sect. 9.

⁴ Sect. 10.

⁵ Sect. 11.

⁶ Sect. 12.

⁷ Sect. 13. See 1 & 2 Will. IV. c. 83.

⁸ 3 & 4 Will. IV. c. 68, s. 15.

⁹ 6 & 7 Will. IV. c. 88, s. 6.

¹⁰ Sect. 9.

¹¹ 23 & 24 Vict. c. 107, s. 42.

¹² 37 & 38 Vict. c. 69, s. 27.

¹³ Sect. 25.

¹⁴ Sect. 2. See *Horley v. Rogers*, *ante*, p. 110.

¹⁵ Sect. 3.

¹⁶ *Ante*, p. 110.

Dublin.—These officers may arrest unknown offenders¹ and all loose and disorderly persons and night walkers.²

Constabulary.—These have all the powers of constables.³

Towns.—The corresponding Act is 17 & 18 Vict. c. 103.⁴ Disorderly persons at night may be arrested.⁵

Entry.—The Factory and Gun Acts apply.⁶ The corresponding Licensing Act is 37 & 38 Vict. c. 69, s. 23, of which is identical with c. 49, s. 16.⁷ They may also enter retail houses at the time mentioned above under the head of arrest where offences are suspected of being committed,⁸ and licensed grocers' premises when open for sale,⁹ or licensed spirit houses,¹⁰ or refreshment houses between 9 P.M. and 7 A.M.,¹¹ and those of wine retailers when open for sale,¹² and there search for spirits and examine wines.

Dublin.—See 5 & 6 Vict. c. 24, and note *supra*.

Search and Seizure.—This is practically as in England.¹³ They may impound cattle straying,¹⁴ and seize carts, etc., of persons arrested.¹⁵

Dublin.—As to roads and streets, see 14 & 15 Vict. c. 92, and 5 & 6 Vict. c. 24.¹⁶

Towns.—Cattle straying may be impounded.¹⁷

Bail, Chimney-sweepers, Pedlars and Guns.—These are as in England.¹⁸

GAOLERS.

The powers of these officers are determined by rules.¹⁹

The DISEASES OF ANIMALS, CRUELTY TO ANIMALS, EXPLOSIVES, FACTORIES, MINES, MERCHANT SHIPPING, RAILWAYS AND ALKALI Acts apply.²⁰

¹ 5 & 6 Vict. c. 24. This Act is similar to the Metropolitan Act, *ante*, p. 113, and the powers thereunder are practically identical.

² 6 & 7 Will. IV. c. 29, s. 7. See 48 Geo. III. c. 140, s. 53. As to the Liffey or Kingstown Harbour, see 5 & 6 Vict. c. 24, ss. 18-24.

³ 6 & 7 Will. IV. c. 13, s. 11.

⁴ This Act is similar to the English Act, and the powers are practically identical, see *ante*, p. 115.

⁵ Sect. 89. As to County, see 21 & 22 Vict. c. 72, and watchmen, 9 Geo. IV. c. 82, ss. 47, 48.

⁶ *Ante*, p. 117.

⁷ *Ante*, p. 117.

⁸ 8 & 4 Will. IV. c. 68, s. 15; 6 & 7 Will. IV. c. 88, ss. 6, 9.

⁹ 8 & 9 Vict. c. 64, s. 2.

¹⁰ 17 & 18 Vict. c. 89, s. 12.

¹¹ 23 & 24 Vict. c. 107, s. 20.

¹² Sect. 26.

¹³ *Ante*, p. 118.

¹⁴ 14 & 15 Vict. c. 92, s. 10.

¹⁵ Sect. 14.

¹⁶ As to dogs, see 2 & 3 Vict. c. 78, s. 15.

¹⁷ 17 & 18 Vict. c. 103, s. 71.

¹⁸ *Ante*, p. 120.

¹⁹ 40 & 41 Vict. c. 49, s. 47.

²⁰ *Ante*, p. 121-125. As to paupers, see 1 & 2 Vict. c. 56, ss. 58-60.

WATER BAILIFFS.

These officers may enter places (not being a curtilage or garden) on banks of rivers and lakes and boats engaged in fishing for salmon or trout and examine all tackle, etc., on producing their certificate properly endorsed.¹

And persons may be apprehended using illegal nets or engines, or prohibited at the time or acting otherwise illegally if they refuse to give their names and do not desist from the offence,² and persons using violence to impede lawful fishing may be arrested by these officers or peace officers or commissioned officers employed for that purpose.³ Nets illegally used may be seized and retained in custody until the next sitting of the petty sessional court of the district or any adjournment thereof.⁴

In close time all obstructions may be removed, and nets, etc., found or used contrary to the Act may be seized and removed.⁵

These officers and constabulary may, on producing the instrument of their appointment if demanded,⁶ open and examine all baskets and boxes and other packages containing fish, whether at stations, docks, quays, markets, stores, fishing places, or any other places whatsoever, for the purpose of enforcing the provisions of this Act and the Salmon Fishery Acts.⁷

And they may exercise these additional powers (1) stop and search on any river, lake or estuary, or any part of the sea-coast, any boat, etc., used in fishing, or which there is reasonable cause to suspect contains any pollen, and seize any fish, instrument of fishing, or other articles forfeited in pursuance of the said Acts, or this Act, (2) stop and examine all nets, baskets, bags, hampers, boxes or other instruments used in fishing or in carrying fish by persons whom there is reasonable cause to suspect of having possession of fish illegally caught, and seize all fish and other articles forfeited in pursuance of the said Acts or this Act.⁸

IV. WALES.

These laws are as in England.

¹ 5 & 6 Vict. c. 100, s. 84.

² Sect. 87.

³ Sect. 88.

⁴ Sect. 103. See *R. v. Limerick*, 1898, 2 L. R. 185, and 52 & 53 Vict. c. 74, s. 3.

⁵ 8 & 9 Vict. c. 104, s. 10. Close time for salmon, 20th August to 12th February; trout, 1st October to 12th

February; oysters, 1st May to 1st September, subject to alteration by commissioners. The offences are similar to those under the English Acts.

⁶ 54 & 55 Vict. c. 20, s. 7.

⁷ Sect. 5.

⁸ Sect. 6.

PART III.

LIABILITIES.

UNDER WARRANTS AND ORDERS OF SUPERIOR COURTS AT COMMON LAW.

THE first point to consider in reference to the liability of officers when acting under warrants and orders of any kind which issue in a due and regular manner is this, that obviously the exercise of the power conferred may be either (1) accurate, or (2) inaccurate. Inaccuracy of performance again divides itself into two kinds, namely, that which occurs where the power has been exceeded, and that where the duty to be performed has to some extent at least been neglected. It is only in the case of accurate performance that protection is afforded to the officer by virtue of the warrant.¹ As regards inaccuracy, where the power has been exceeded, it would expose the officer to proceedings either civil or criminal on account of the excess, and where there has been neglect of duty to the detriment of the public, an attachment, information, or action would be held to lie. But where there has been mere excess of authority by officers acting under warrant, the doctrine of trespass *ab initio* does not apply as in the case of an overcharge in the nature of extortion,² nor does it in any event in the case of nonfeasance.³ On the other hand, where there is any grossness or culpability in the excess such doctrine is applicable. Where for instance a sheriff merely continued in possession longer than the time allowed by law, he was held a simple trespasser.⁴ But where he so continued after the return day of the writ, such excess was held to constitute him a trespasser *ab initio*.⁵ And the same was decided where under a writ of *ca. sa.* he had broken an outer door.⁶ And in this last-mentioned case Lord Abinger said: "Where a party by reason of any irregularity becomes a trespasser *ab initio*, he cannot justify at all".

It has been already stated that the officer can claim the protection of the warrant only in those cases where there has been accurate

¹ *Money v. Leach*, 19 St. Tr. 1001; and cf. *Crozier v. Cundy*, 9 D. & R. 146 a. 224; 6 B. & C. 232; and *Bell v. Oakley*, 2 M. & S. 259.

² *Lloyd v. Davies*, 2 Ex. 108. See 198. this doctrine stated, *post*, p. 164.

³ *Six Carpenters' Case*, 8 Coke,

⁴ *Ash v. Dawney*, 8 Ex. 237.

⁵ *Aitkenhead v. Blades*, 5 Taunt.

⁶ *Kerby v. Denbey*, 1 M. & W. 336.

performance. This proposition needs a further limitation. The execution of a warrant or order of a superior Court at common law must take place under one of three conditions. Either the warrant or order must be (1) within the jurisdiction of the Court which issues it, or (2) apparently so, or (3) clearly outside such jurisdiction. The rule of law is that where an officer is acting under a warrant issued subject to either the first or second conditions, he is under no liability whatever on account of the execution, provided with no unnecessary force or violence he does simply what he was directed to do.¹

But in the case of warrants and orders of the House of Commons the protection is confined to the first case only, namely, where such House had jurisdiction to issue the warrant or order. In *Stockdale v. Hansard*² it was held no defence to an action for publishing a libel that the defamatory matter was part of a document which was by order of the House of Commons laid before the House, and thereupon became part of the proceedings of the House, and which was afterwards by order of the House printed and published by the defendants, on the ground that the existence of such privilege as would support the plea was negatived. On the other hand, in *Bradlaugh v. Erskine*,³ to a claim for damages for an assault committed on the plaintiff, a member of Parliament, while attempting to enter the House for the purpose of taking his seat, defendant pleaded in justification thereof that the House had previously resolved and ordered that the defendant should "remove plaintiff from the House until he should engage no further to disturb the proceedings of the House," and that acting in pursuance of such order, defendant resisted and removed plaintiff. It was held on demurrer that the plea was good on the ground that the right of the Houses to impose discipline within their walls was absolute and exclusive.⁴

"Writs issued by a superior Court not appearing to be out of the scope of their jurisdiction are valid and of themselves without any further allegation, a protection to all officers and others in their aid acting under them; and that although they be on the face of them irregular as a *capias* against a peeress⁵ or void in form as a *capias ad respondendum* not returnable the next term⁶ for the officers ought not to examine the judicial act of the Court whose servants they are, nor exercise their judgment touching the validity of the process in point of law, but are bound to execute it, and are therefore protected by it."⁷

If the process issue from a Court or person having competent jurisdiction, it will confer an authority even though there be error

¹ *Howard v. Gossett*, 10 Q. B. 359; B., and Tindal, C.J., in *Gossett v. cf. Andrews v. Marris*, 1 *ib.* 17; and see *Brown v. Watson*, 23 L. T. 745; *Tarleton v. Fisher*, Doug. 671.

² 9 Ad. & E. 1.

³ 47 L. T. 618.

⁴ See *Bradlaugh v. Gossett*, 12 Q. B. D. 271, and the remarks of Alderson,

Howard, 10 Q. B. 412, n.

⁵ *Countess of Rutland*, 6 Rep. 54 a.

⁶ *Parsons v. Lloyd*, 3 Wils. 341.

⁷ *Turner v. Fellgate*, 1 Lev. 95; *Cotes v. Michill*, 3 *ib.* 20. See the

judgment of Parke, B., in *Gossett v. Howard*, 10 Q. B. 453.

or irregularity in the previous proceedings¹ or the charge contained in it be utterly unfounded.² But if it be defective on the face of it, as if there be a mistake in the name of the party to be arrested, or if the name of the officer or party to be arrested be inserted without authority and after the issue of the process, the apprehension may be resisted and the killing of the officer will be manslaughter only.³

The phrase above quoted "for the officers ought not to examine the judicial act of the Court whose servants they are, nor exercise their judgment touching the validity of the process in point of law," is one which requires interpretation. It may be thus stated. Being satisfied that the act of which the process issuing in a due and regular manner is the consequence, is the judicial act of the Court whose servants they are, they are not to inquire further, but are bound to execute it. But it is quite clear that they are bound to inquire so far as to satisfy themselves that it is the judicial act of such Court. And it is obvious that it may prove *not* to be so in two modes—first, that the process is feigned, forged or simulated, and is not the process or order of the Court,⁴ or second (which is the third condition under which such warrants and orders may issue) that the Court has in the specific instance manifestly exceeded its jurisdiction,⁵ inasmuch as it was unable to take cognisance of the cause or matter in which the process issued.⁶

Here it is no defence to the officer if he execute it, and he can derive no protection from it.

[The law of Scotland appears to be practically the same.⁷]

With regard to justification, it has been held that a man acting under legal authority is not confined to the authority under which he has professed to act at the time when he acted, but he may resort to any other authority which justified his proceeding.⁸ Again, where the judgment is subsequently reversed as being wrong in point of law, all irregular process under it before the appeal is heard is good, and affords a justification to all parties acting under it.⁹

In pleading, the defendant is bound to set forth the warrant, and rest his justification upon it,¹⁰ but he need state nothing in the defence but the issue thereof.¹¹

The greater part of the cases which occur in which officers of the superior Courts are concerned are those in which the defendant is—

¹ 1 Hale P. C. 457. [*Aitkin v. Finlay*, 15 S. 683.]

² 1 East P. C. 310; *Green v. Elgie*, 5 Q. B. 99; *Ex parte Fernandez*, 10 C. B. N. S. 3.

³ *Ibid.*

⁴ *Hooper v. Lane*, 6 H. L. C. 443; 27 L. J. Q. B. 75.

⁵ *Stockdale v. Hansard*, 9 Ad. & E. 1.

⁶ *Rutland, ubi supra*; *Parsons v. Lloyd, ubi supra*; *Smith v. Bourchier*, 2 Stra. 994; *Perkins v. Proctor*, 2 Wils.

385; and see *R. v. Danser*, 6 T. R. 245.

⁷ See Smith on Reparation.

⁸ Per Williams, J., *Hooper v. Lane, ubi supra*.

⁹ *Weiss v. Smith* 14 C. B. N. S. 596; *Smith v. Sydney*, L. R. 5 Q. B. 208; 39 L. J. Q. B. 144.

¹⁰ *Greene v. Jones*, 1 Wms. Saund. 298, n. 1.

¹¹ Lev. p. 191 a.; Com. Dig. Pl. 3 M. 24; *Britton v. Cole*, 1 Salk. 408.

THE SHERIFF,

whose position in point of law is peculiar. Although he is the officer entrusted with the execution of the Queen's writs,¹ practically he never executes in person, but employs under-sheriffs, bound bailiffs and others, for that purpose. The writ which goes to the sheriff has upon its face an injunction to make out his warrant to his bailiff to levy the execution in question. The justification of the sheriff is the writ, of the bailiff the warrant.² From this principle it follows that so far as the liability of the sheriff is concerned, it matters not what is the form of the warrant which he issues to the bailiff. He is not only liable for the acts of the bailiff done under the warrant,³ but also for any mistake or misconduct committed in the course of the execution.⁴ It is no defence for the sheriff to say that his orders were not attended to. He still remains liable, provided the act complained of be one which the officer was bound to do while acting in execution of the sheriff's orders,⁵ and an actual recognition by the sheriff of such acts is not necessary.⁶

"There is no doubt that the sheriff is liable for all acts done and neglects of duty by the bailiff in the execution of a writ, on the ground that if the sheriff thinks fit to commit the execution of a writ, which he is bound to execute, to another, he is responsible if that person does not execute it properly, and is in the same condition as if he had executed it himself,⁷ the case of a sheriff differing in this respect from the liability of an ordinary principal, for the acts of an agent who does not pursue the authority committed to him."⁸ And this is so "for the sake of securing a responsible recourse for indemnity in case of any wrong done in the execution of process".⁹

[In Scotland the messenger-at-arms is liable in practically the same way. But he executes in person, and his cautioners, *i.e.* sureties, are generally sued with him.]

In order to render the sheriff liable for the act of his officer, it is sufficient to produce the warrant, without the writ, and it lies upon the sheriff to prove that no such writ issued,¹⁰ but the mere proof that the officer is the bailiff of the sheriff, without producing the warrant is not sufficient¹¹ unless there be recognition by the sheriff that the officer acted under his authority, which will dispense with the necessity of producing the warrant.¹² If the officer swear that the

¹ 50 & 51 Vict. c. 55, s. 8.

² *Hooper v. Lane*, *ubi supra*.

³ *Crowder v. Long*, 8 B. & C. 605; 3 M. & R. 17.

⁴ *Smart v. Hutton*, 8 A. & E. 568; 2 N. & M. 426.

⁵ *Smith v. Pritchard*, 8 C. B. 588.

⁶ *Sanderson v. Baker*, 3 Wils. 309; 2 W. Bl. 832.

⁷ *Parrott v. Mumford*, 2 Esp. 585.

⁸ *Per Parke, B., Woods v. Finnis*, 7 Ex. 371.

⁹ *Per Erle, J., Hooper v. Lane*, *ubi supra*. As to a writ directed to the coroner, see *Serjeant v. Cowan*, 1 Cr. & M. 491.

¹⁰ *Gibbins v. Phillips*, 2 M. & R. 238; 7 B. & C. 535; *Grey v. Smith*, 1 Camp. 387. See *George v. Perring*, 4 Esp. 63.

¹¹ *Drake v. Sykes*, 7 D. & E. 113.

¹² *Jones v. Wood*, 3 Camp. 228; *Shepherd v. Wheble*, 8 C. & P. 534; *Martin v. Bell*, 1 Stark. 413.

warrant existed, though it be lost, it is sufficient,¹ and in such cases secondary evidence is admissible.²

Where the warrant recites the writ, evidence of the judgment is not necessary.³ And it has been held that the sheriff need not prove the writ where the plaintiff claims by virtue of an assignment which is void as against creditors.⁴

Proof of the indorsement of the officer's name on the writ by a clerk in the under-sheriff's office is *prima facie* evidence to connect the sheriff.⁵

Where the execution took place at the time of year when the sheriffs were changed, and a witness after the case was set down for trial saw a form of return signed by the defendant, as sheriff, indorsed on the writ, which had never been returned, it was held sufficient to shew that he was the sheriff who executed the writ. The writ, when produced, having the name of the sheriff erased, it was held for the jury to say whether the erasure was made to correct a mistake, or to defeat the plaintiff.⁶

In an action against a surviving sheriff of London, a return to a writ directed to both sheriffs, purporting to be that of both, is conclusive to shew that the return was authorised by the survivor.⁷

Admissions made by an officer while in possession under a writ are evidence against the sheriff,⁸ and if the officer be guilty of excess, even though it be contrary to the orders of the under-sheriff, the sheriff will not be allowed to bring evidence which would tend to disclaim his responsibility.⁹

A sheriff's-officer who is subpœnaed to produce his warrant, need not be sworn.¹⁰

The Under-Sheriff.—With regard to the under-sheriff, it appears that he is, while acting in that capacity, not liable for any neglect of duty, nor will an action lie against him for any default in him. For all such neglect or default, the sheriff is alone responsible.¹¹ But this rule does not extend to cases of extortion on the part of this officer when proceeded against criminally, nor to any other liability criminally for unauthorised acts.¹²

Where the sheriff dies, the under-sheriff must, until a successor

¹ *Moon v. Raphael*, 2 Scott 489; 2 Bing. N. C. 310.

² *Minshall v. Lloyd*, 2 M. & W. 450; *Taplin v. Atty.*, 3 Bing. 164.

³ *Bessey v. Windham*, 6 Q. B. 166; 14 L. J. Q. B. 7; *White v. Morris*, 11 C. B. 1015; 21 L. J. C. P. 185.

⁴ *Ogden v. Hesketh*, 2 C. & K. 772; and see *Reid v. Poyntz*, 8 Dowl. 410; 6 M. & W. 412; 9 C. & P. 515.

⁵ *Scott v. Marshall*, 2 C. & J. 238; 2 Tyr. 257; *Fermor v. Phillips*, 5 Moo. 184; 3 B. & B. 27; Holt 537.

⁶ *Whitehouse v. Atkinson*, 3 C. & P. 344.

⁷ *Carlile v. Parkins*, 3 Stark. 163.

⁸ *Jacobs v. Humphrey*, 2 Cr. & M. 413.

⁹ *Scarfe v. Halifax*, 7 M. & W. 288.

¹⁰ *R. v. Menlis*, M. & M. 515; *Summers v. Moseley*, 4 Tyr. 158; 2 C. & M. 477.

¹¹ *Cameron v. Reynolds*, Cowp. 406. In Ireland actions for neglect or misconduct lie also against this officer: 57 Geo. III. c. 68, s. 3.

¹² *Hescott*, 1 Salk. 390; *Laicoock*, Lat. 187; *Rankin v. Kennedy*, I. T. R. 281.

be appointed, execute the office of sheriff, and while so doing he is liable in all respects as the sheriff, and may appoint a deputy.¹

Where an assignment of a lease by deed taken in execution was made in the name and under the seal of office of the sheriff, by A. B., acting as under-sheriff, it was held that such assignment was sufficiently proved without further proving the appointment of A. B., as under-sheriff.²

The Bailiff.—Bailiffs are of three kinds, namely, special bailiffs, bound bailiffs and bailiffs of liberties.

A special bailiff is one appointed by the sheriff for the execution of a particular writ at the instance of the execution-creditor, or some other person similarly interested or his agent. The effect of the selection of such a bailiff is to relieve the sheriff from responsibility to the party at whose instance he was appointed,³ but to all other persons he is liable in the usual manner.⁴ What constitutes a special bailiff is matter of evidence in each case.⁵ A mere request that a particular officer may be employed is not sufficient,⁶ nor is mere interference with the officer on the part of the debtor.⁷

A bound bailiff is the one usually employed by the sheriff.

It is no part of the duty of this officer to receive writs of execution from the parties.⁸

If the warrant be addressed to him alone, and not to him and his assistants, he must himself execute it,⁹ or, at any rate, be near at the time of execution.¹⁰ The receipt of money by the bailiff in satisfaction of a judgment-debt is receipt by the sheriff, and the sheriff is liable therefor, although there is no evidence of the money coming to his hands.¹¹ The bailiff would appear to be personally liable for a false return.¹² There is no liability criminally on the part of the sheriff for the acts of the bailiff,¹³ and this includes proceedings for penalties for extortion against the officer.¹⁴ In such case the sheriff is irresponsible.¹⁵

A liberty is a district in regard to which grants have been anciently made by the Crown to individuals conferring on them or their bailiffs the exclusive privilege of executing legal process therein.¹⁶ Westminster and Pontefract are instances of such liberties. The powers, duties and liabilities of a bailiff of a liberty are similar

¹ 50 & 51 Vict. c. 55, s. 25. I., 45 & 46 Vict. c. 49, s. 40.

² *James v. Brown*, 5 B. & Ald. 243.

³ *Pallister v. Pallister*, 1 Chit. 614.

⁴ *Wat.*, 2nd ed., p. 41.

⁵ *Ford v. Leche*, 6 A. & E. 699; 1 N. & P. 737.

⁶ *Wright v. Child*, L. R. 1 Ex. 358; 35 L. J. Ex. 209; 15 L. T. 141.

⁷ *Corbet v. Brown*, 6 D. P. C. 794. In I. such bailiffs may be appointed for civil bill decrees: 34 & 35 Vict. c. 99, s. 5.

⁸ *Triminger v. Keene*, W. N. (1882), p. 106.

⁹ *R. v. Noonan*, 10 Ir. C. L. R. 505.

¹⁰ *Wat.*, p. 70.

¹¹ *Woodman v. Gist*, 8 C. & P. 213;

Jones v. Perchard, 2 Esp. 507; *Gregory v. Cotterell*, 5 El. & Bl. 571; 25 L. J. Q. B. 33.

¹² *Jackson v. Hill*, 10 Ad. & E. 477; 2 P. & D. 455.

¹³ *Sanderson v. Baker*, 3 Wils. 309;

2 W. Bl. 832; *Woodgate v. Knatchbull*, 2 D. & East 154.

¹⁴ 50 & 51 Vict. c. 55, s. 29. I., see 57 Geo. III. c. 68, s. 3.

¹⁵ *Woodgate v. Knatchbull*, *ubi supra*.

¹⁶ *Steph. Comm.* 11th ed., p. 640.

to those of a bound bailiff.¹ When the king is a party, or the writ contains a *non omittas* clause, the sheriff or his officer must enter the franchise and execute the writ. And in any other case he may enter, and the execution is not on that account irregular; but the lord may recover compensation from the sheriff, for an infringement of his right; though the party against whom the writ was issued has no remedy.² When the sheriff has made out his mandate to the bailiff of a liberty, the bailiff and not the sheriff is responsible.³ Process directed in the first instance to the bailiff of a franchise is void,⁴ and the bailiff executing it is guilty of a trespass against the party whose goods are taken in execution, for he is not the recognised officer of the Court, but the sheriff.⁵ The sheriff's mandate requires the bailiffs of the liberty to make their return to the sheriff; but, in practice, such return is made direct to the Court.⁶

UNDER WARRANTS AND ORDERS OTHER THAN THOSE OF SUPERIOR COURTS AT COMMON LAW.

A. AFTER ADJUDICATION.

The liability of an officer when acting under a warrant or order of this class where there has been an adjudication is practically identical with that of an officer acting under warrant or order of a superior Court at common law, the main distinction being that which was pointed out at the commencement of the work, namely, that whereas the presumption in favour of jurisdiction is general in the case of warrants and orders of the kind last mentioned, it extends only to what appears on the face of the particular instrument in the case of these warrants and orders.

Putting aside this distinction, the rule as to liability is the same, namely, that where an officer acts under a warrant or order of the class we are now considering, which shows on its face to have been made (1) within the jurisdiction of the Court or person issuing it, or (2) apparently so, it is a complete justification to the officer.⁷ On the other hand, where it clearly appears to have been made without such jurisdiction, being beyond the scope of the powers delegated to the Court or officer issuing it, it is no protection to the officer, and he can derive no shelter from what is practically a piece of waste paper.⁸

It is necessary for a party who relies upon the decision of an inferior tribunal to show that the proceedings were within the jurisdiction of the Court.⁹ An officer of an inferior Court may justify acting

¹ 50 & 51 Vict. c. 55, s. 34.

² *Carrett v. Smallpage*, 9 East 330.

³ *Boothman v. Earl Surrey*, 2 D. &

Ex. 4.

⁴ Except in Westminster.

⁵ *Grant v. Bagge*, 3 East 128.

⁶ Wat., p. 61.

⁷ *Andrews v. Marris*, 1 Q. B. 17;

Patchett v. Bancroft, 1 East 563, n.

Goodwin v. Gibbons, 4 Burr. 2108;

Olliet v. Bessey, T. Jon. 214.

⁸ *Carratt v. Morley*, 1 Q. B. 28; and see *R. v. Danser*, 6 T. R. 245.

⁹ Per Alderson, B., *Stanton v. Styles*, 5 Ex. 583.

under process which is only voidable, but not under void process.¹ But in an action by A. against B. for false imprisonment, B. cannot defend himself under a justice's warrant against C., although A. was charged for felony before the magistrate, and was the person against whom the warrant was intended to issue.² "It would be dangerous if a person, whose office is purely ministerial, were allowed to sit in judgment and say who is the unnamed person intended by the warrant which he is required to execute."³

Trespass is only maintainable where the process is an absolute nullity, not where it is merely erroneous in form.⁴ Where there is no jurisdiction as above stated, the whole proceeding being *coram non iudice*, process is no protection against such an action.⁵

The doctrine of trespass *ab initio* is as applicable to cases arising under these warrants and orders as to those of superior Courts at common law;⁶ but since the greater part of these warrants are issued either by County Courts or by justices to both classes of which a special form of protection is afforded, the point becomes of little practical value. Moreover, under certain statutes, it is expressly laid down that officers acting under warrants issued thereunder shall not be liable as such trespassers.⁷

As to warrants of the County Court it is laid down that the high bailiff is by himself or by the bailiffs appointed to assist him to execute them, and he is to be responsible for the acts and defaults of himself and such bailiffs as the sheriff is for himself and his officers.⁸ The high bailiff, however, of the Court out of which a warrant originally issues is not responsible for any irregularities in its execution by the bailiff of another Court, even though his own bailiff assisted therein.⁹

And for the protection of this officer it is provided that no action shall be commenced against any bailiff or against any person acting by the order or in aid of any bailiff for anything done in obedience to any warrant under the hand of the registrar and the seal of the Court until demand has been made or left at the office of such bailiff

¹ *Morse v. James*, Will. 122; see *Ex parte Besset*, 6 Q. B. 481.

² *Hoye v. Bush*, 1 M. & G. 775.

³ *Per Tindal, C.J.*, S. C.

⁴ *Riddell v. Pakeman*, 5 Tyr. 721; 2 Cro. M. & R. 30; and see *R. v. Binney*, 1 El. & B. 810; 22 L. J. M. C. 110; *R. v. Ely, JJ.*, E. & B. 489; 55 L. J. M. C. 1; *Gay v. Matthews*; 38 L. J. M. C. 14; 11 W. R. 922; 8 L. T. 674; *Keane v. Reynolds*, 2 El. & B. 748.

⁵ *Marshalsea*, 10 Rep. 68 b, 76 a.; *Perkin v. Proctor*, 2 Wils. 382; *Miller v. Seare*, 2 W. Bl. 1141; *Smith v. Bourchier*, 2 Str. 993; *Higginson v. Martin*, 2 Mod. 195; and see *Doswell v. Impey*, 1 B. & C. 163. [*Ballentine v. Ross*, 2 Mur. 529.]

⁶ See the cases cited, *ante*, p. 150.

⁷ See *e.g.*, 2 & 3 Vict. c. 71, s. 51; 8 & 9 Vict. c. 109, s. 21; 17 Geo. II. c. 38, s. 8; and see also *Goodwin v. Gibbons*, 4 Burr. 2108; and *Olliet v. Bessey*, T. Jon. 214. As to I., 48 Geo. III. c. 140; 23 & 24 Vict. c. 154, s. 89; 27 & 28 Vict. c. 99, s. 25.

⁸ 51 & 52 Vict. c. 43, s. 35; and see *ante*, p. 153; and *Burton v. Le Gros*, 34 L. J. Q. B. 91. [In S. the sheriff's officer appears to be under the same liability as the messenger-at-arms.] As to I., 27 & 28 Vict. c. 99, s. 4; *O'Dea v. Hickman*, 18 Ex. Ir. 233.

⁹ *Smith v. Pritchard*, 8 C. B. 565. A registrar who performs the duties of high bailiff is under the same liability.

by the party intending to bring such action or by his solicitor or agent in writing, signed by the party demanding the same, of the perusal and copy of such warrant and the same has been refused or neglected for the space of six days after such demand, and in case after such demand and compliance therewith by shewing the said warrant to and permitting a copy to be taken thereof by the party demanding the same any action shall be brought against such bailiff or other person acting in his aid for any such cause as aforesaid without making the registrar who signed or sealed the said warrant, defendant on producing or proving such warrant at the trial of such action, a verdict shall be given for the defendant notwithstanding any defect of jurisdiction or other irregularity in the said warrant, and if such action be brought jointly against such registrar and also against such bailiff or person acting in his aid as aforesaid, then on proof of such warrant the finding shall be for such bailiff and for such person so acting as aforesaid notwithstanding such defect or irregularity as aforesaid.¹ This section and 56 & 57 V. c. 61² cover cases where the warrant has been made without jurisdiction.³

A similar enactment, substituting the words "constable or other officer" for "bailiff" and "justice" for "registrar" is in force for the protection of officers acting under warrants of justices.⁴

With reference to this latter enactment, it has been held that it does not apply to warrants of the Queen's Bench⁵ nor of the Secretary of State,⁶ nor of commissioners of taxes,⁷ and that it extends only to actions of tort.⁸ It seems, however, to refer to all officers generally,⁹ although not in an action of *replevin*.¹⁰ In order to obtain the benefit of the statute the officer must shew that he acted in obedience to the warrant, and did not exceed his authority,¹¹ and that he has complied with the terms of the section;¹² but if he has exceeded his duty, but such excess was committed in the *bona fide* belief that he was acting in execution thereof, he is equally entitled to the protection.¹³ And it applies though the warrant be granted without jurisdiction,¹⁴ or the magistrates without authority order the suspension of the execution.¹⁵ If, however, the officer loses the protection of the statute, he must justify under the warrant.¹⁶

¹ 51 & 52 Vict. c. 43, s. 54. No similar enactment *semble* in S. or I. 7 T. R. 274; *Butt v. Newman*, Gow. 97.

² *Post*, p. 166.

³ *Aspey v. Jones*, 54 L. J. Q. B. 98.

⁴ 24 Geo. II. c. 44, s. 6. [This Act does not apply to S. but constables there have the same privilege as justices: *Douglas v. Lockhart*, M. 7640; *Boyd's Justice* 791.]

⁵ *Gladwell v. Blake*, 1 C. M. & R. 636; 1 Tyr. 186.

⁶ *Entick v. Carrington*, 19 St. Tr. 1080; 2 Wils. 275.

⁷ *Charleton v. Alway*, 11 A. & E. 993.

⁸ *Green v. Rowan*, 7 C. & P. 48 N.

⁹ *Per Kenyon, C.J., Harper v. Carr*,

¹⁰ *Milward v. Caffin*, 2 W. Bl. 1391.

¹¹ *Bell v. Oakley*, 2 M. & S. 259.

¹² *Clark v. Woods*, 17 L. J. M. C. 189. See *Jones v. Vaughan*, 5 East 445.

¹³ *Parton v. Williams*, 3 B. & A. 330; *Gosden v. Elphick*, 4 Ex. 445; 19 L. J. Ex. 9.

¹⁴ *Atkins v. Kilby*, 11 Ad. & E. 784; 4 P. & D. 145; *Price v. Messenger*, 2 B. & P. 158; 3 Esp. 96.

¹⁵ *Barrons v. Luscombe*, 5 N. & M. 330; 3 A. & E. 589; 1 H. & W. 457.

¹⁶ *Read v. Coker*, 13 C. B. 859; 22 L. J. C. P. 205.

The statute does not apply unless there be a remedy over (supposing the warrant illegal) against the magistrate who issues it.¹ Nor does it where a wrong person is arrested or a person under a wrong name,² or a door be broken in execution of civil process,³ or where goods are seized not mentioned in the warrant, and not likely to be of use as evidence,⁴ or where the officer has executed it outside his jurisdiction.⁵

The demand is good if signed by the plaintiff, his attorney or agent, and served or left by any other person,⁶ and though it require the perusal and copy to be given within three days.⁷

As regards the County Court it is enacted that no officer shall be deemed a trespasser by reason of any irregularity or informality in any proceeding on the validity of which such warrant depends, or in the form of such warrant, or in the mode of executing it.⁸ And the same rule applies to officers acting under warrants of justices.⁹ And where they execute warrants of possession or for the recovery of tenements, they are under no liability on account of the person on whose application the warrant is granted having no lawful right to the possession of the premises.¹⁰

B. WHERE NO ADJUDICATION.

It has been already pointed out that in the case of warrants and orders other than those of superior Courts at common law, the officer is under no liability for executing them where it appears on the face of the instrument either (1) that the Court or person issuing them had, or (2) apparently had jurisdiction to do so. But this is confined to cases where there has been an adjudication. Where, however, there has been no adjudication, the rule as to liability is a different one. Acting under such warrants and orders the officer is protected only where the person or body issuing them had jurisdiction to do so, and the execution thereof is strictly carried out. If there was apparently jurisdiction when none in fact or clearly none at all, the warrant or order is equally valueless.¹¹ But with this rule must be coupled the statute passed for the protection of officers acting under warrants of justices, and which we have discussed above,¹² the greater number of warrants of this class being issued by those judicial officers.

¹ *Sly v. Stevenson*, 2 C. & P. 464; *Cotton v. Radwell*, 2 N. & M. 399.

² *Haye v. Bush*, 2 Sc. N. R. 86; 1 M. & S. 775.

³ *Bell v. Oakley*, 2 M. & S. 259.

⁴ *Crozier v. Cundy*, 9 D. & R. 224; 6 B. & C. 232.

⁵ *Milton v. Green*, 5 East 298.

⁶ *Clark v. Woods*, 3 New Sess. Cas. 213.

⁷ *Collins v. Rose*, 5 M. & W. 194; 7 D. P. C. 796.

⁸ 51 & 52 Vict. c. 43, s. 52. I., 27 & 28 Vict. c. 99, s. 25.

⁹ See 11 & 12 Vict. c. 43, s. 3; 2 & 3 Vict. c. 71, s. 51. I., 6 & 7 Will. IV. c. 13, s. 50.

¹⁰ 1 & 2 Vict. c. 74, s. 5; 51 & 52 Vict. c. 43, s. 144. [S., 27 & 28 Vict. c. 53, ss. 30, 35; 55 & 56 Vict. c. 55, s. 356.] I., 14 & 15 Vict. c. 92, s. 15.

¹¹ *Foster v. Dodd*, L. R. 3 Q. B. 76; *Wilkins v. Hemsworth*, 7 A. & E. 807; *Coghlan v. Woods*, 10 Ex. Ir. 29.

¹² *Ante*, p. 158.

Where an act can be done in a legal manner, the person giving the direction is not responsible for the act done if it be carried out in an illegal manner unless the relation of master and servant¹ exists between the person giving the direction and the person executing it.²

C. ORDERS OF LOCAL AUTHORITIES.

In regard to the other orders which have been enumerated above,³ it is obvious that they divide themselves into two classes, namely, general and specific. In both of these the law of principal and agent strictly applies.

Where an officer is appointed by some person or body to do a class of acts, he becomes by virtue of his appointment the general agent of such person or body while acting in the performance of his duty. The liability in such cases of the principal has been thus stated: A person [or body] who puts another in his place to do a class of acts in his absence is answerable for the wrong of the person so entrusted, either in the manner of doing such an act, or in doing such an act under circumstances in which it ought not to have been done; provided that what is done is not done from any caprice of the servant, but in the course of the employment.⁴ A local authority in their public capacity are liable for any negligence of their servants.⁵ Where, however, the officer is appointed or directed to do some particular thing and that only, the liability of the person or body so appointing or directing him is more limited. In such cases the agent only binds the principal when acting in strict accordance with his instructions.⁶ Moreover, the principal is in any case liable if the act complained of be one which was done for his benefit, whether or not there was any precedent authority, if the principal subsequently ratify the act.⁷ Where there is a violation of a right to property or to personal security, he who procures the wrong to be done is a joint wrongdoer, and may be sued either alone or jointly with the agent for the wrong done.⁸ If an assault or imprisonment of the plaintiff be the necessary or probable consequence of orders given by the defendant, he will be responsible, although he did not directly order it or contemplate the possibility of its occurrence.⁹

What is within or without the scope of the authority is matter of

¹ See *infra*.

² *Creagh v. Gamble*, 24 L. R. Ir. 458. [*Bain v. Barnet*, 19 D. 405; *Hollands v. Richardson*, 6 D. 9; *Girdwood v. Midlothian*, 22 R. 11.]

³ *Ante*, p. 92, 136, 146.

⁴ Underhill, *Torts*, 6th ed., p. 61. See *Bayley v. Manchester Railway Co.*, L. R. 7 C. P. 415; 42 L. J. C. P. 78; and *Laugher v. Pointer*, 5 B. & C. 547; 8 D. & R. 556; *Joyce v. Metropolitan Board of Works*, 44 L. T. 811; and *cf.*

Abrahams v. Deakin, 39 W. R. 145; 63 L. T. 690.

⁵ *Hall v. Batley*, 47 L. J. Q. B. 148; 37 L. T. 710.

⁶ *Brady v. Todd*, 9 C. B. N. S. 592.

⁷ *Wilson v. Tunman*, 6 M. & Gr. 242; 12 L. J. C. P. 307; and see *Wilson v. Barker*, 4 B. & Ad. 617; 1 N. & M. 409.

⁸ *Per Erle, J., Lumley v. Gye*, 2 El. & Bl. 216; 22 L. J. Q. B. 463; *Barker v. Braham*, 2 W. Bl. 868.

⁹ *Glynn v. Houston*, 2 M. & G. 337; 2 Sc. N. R. 548.

evidence. Where a servant wantonly and not in order to execute the master's orders, struck the plaintiff's horses and thereby produced an accident, the master was held not liable; but if in the course of the employment he so struck, although injudiciously, it would have been otherwise.¹ Again, where a servant wholly exceeded his authority in arresting a person and did an act which was illegal, not in the mode of doing it, but in the doing it at all, the principal was held irresponsible.² But where the act was one which the agent must be assumed to have authority to do, if there was a mistake in the performance of it, such mistake was held within the scope of the authority.³

The fact, however, of the principal becoming liable does not exonerate the agent from his liability for tortious acts done by him. He may therefore be sued either separately or jointly with his principal.⁴

The relationship of principal and agent is unknown to the criminal law. If the principal direct the agent to do a criminal act, they are both liable as principals.⁵ On the other hand, if the agent do a criminal act unknown to the principal but purporting to act by his authority, the principal is irresponsible.⁶

With regard to the principals which are referred to in this class, the general rule as to their liability inasmuch as the powers which they exercise are conferred upon them by law, is that they are liable for any damage which has resulted from the doing of the act as individuals are;⁷ but as the powers which are exercised are almost wholly derived from statute, due regard to the wording of the Act in question must be had in order to ascertain what liability exists in any particular case. And in such circumstances the general rule appears to be the following, namely, that where the duty imposed is discretionary, or at any rate not absolute, the ordinary law as to liability for damage occasioned obtains.⁸ On the other hand, where the duty to be performed is of an absolute character, such liability is under the special circumstances negatived.⁹

The employment of a contractor does not negative the principal's liability.¹⁰ But where an Act provides that on default by the local authority a superior board may make an order against them, an action by a party alleging injury will not lie,¹¹ and where compensa-

¹ *Croft v. Allison*, 4 B. & A. 590.

² *Poulton v. London and South Western Railway Co.*, L. R. 2 Q. B. 534; 36 L. J. Q. B. 294.

³ *Goff v. Great Northern Railway Co.*, 30 L. J. Q. B. 148; 3 L. T. 850.

⁴ *Lumley v. Gye*, *ubi sup.*; and see *Snowden v. Davis*, 1 Taunt. 359.

⁵ Steph. Dig. C. L. 28.

⁶ 1 Hale 618.

⁷ *Vaughan v. Taff Vale Railway Co.*, 5 H. & N. 679. See *R. v. Essex*, 14 Q. B. D. 753.

⁸ *Dunn v. B'mham Canal Co.*, L.

R. 7 Q. B. 244; 8 *ib.* 42; *Broughton v. Midland and Great Western Railway Co.*, 1 Ir. C. L. R. 169; *Metropolitan Asylum District v. Hill*, 6 App. Cas. 193.

⁹ *Brand v. Hammersmith Railway*, L. R. 1 Q. B. 130; 2 *ib.* 223; 4 H. L. 171; *Dixon v. Metropolitan Board of Works*, 7 Q. B. D. 423; and see *Dixon v. Farrer*, 18 *ib.* 43. [The law in S. is the same.]

¹⁰ *Hardaker v. Idle*, 74 L. T. 69.

¹¹ *Robinson v. Workington*, 1897, 1 Q. B. 619; 75 L. T. 674.

tion is provided for by the Act, that remedy must be pursued.¹ But if the powers of the Act have been exceeded, or the thing authorised has been negligently done, an action for damages must be brought.²

UNDER INHERENT POWERS.

Where a public officer acts, or purports to act, by virtue of the powers which the law confers upon him, and while so acting is guilty of any illegality by way of commission or omission, he is personally responsible to the individual who has sustained damage thereby.³ Every one who is appointed to discharge a public duty and receives a compensation, whether from the Crown or otherwise, is constituted a public officer.⁴

The liability, however, of such officers is not confined to cases where there has been either excess of the authority conferred or breach of the duty imposed by law. It extends also to cases where the officer is strictly within the powers conferred on him, but guilty of harsh and oppressive conduct in their exercise. Where a Governor and Vice-Admiral of a Crown Colony suspended the judge of the Vice-Admiralty Court, but maliciously and without reasonable and probable cause, although he had legal authority to do so until the King's pleasure became known and the King subsequently confirmed the suspension, he was held notwithstanding liable in damages.⁵ The gist of the action was, admitting the legality of the suspension thus confirmed, but complaining of the defendant's exercise of his original authority, and his malicious and false representations by which the suspension had been confirmed.⁶

Whoever assists in the doing of an unlawful act becomes answerable for all the consequences of it, and when several persons have been jointly concerned in its commission they may generally all be charged jointly as principals, or the plaintiff may sue any of the parties upon whom individually a separate trespass attaches.⁷ If several are jointly bound to perform a duty, they are liable jointly and severally for the failure or refusal.⁸ And the same measure of liability attaches where several commit a trespass.⁹ Judgment in an

¹ *Watkins v. Gt. Northern Railway*, 16 Q. B. 961; *Boyfield v. Porter*, 13 East 200.

² *Clothier v. Webster*, 31 L. J. C. P. 316; *Stainton v. Woolrych*, 23 B. 233.

³ *Lane v. Cotton*, 1 Ray. 646; 1 Salk. 17; *Tobin v. The Queen*, 16 C. B. 310; 10 Jur. 1029; *Rouning v. Goodchild*, 2 W. Bl. 906; *Barry v. Arnand*, 10 A. & E. 646; 2 P. & D. 633; *Rogers v. Dutt*, 13 Moo. P. C. 209; *Walker v. Baird*, 1892, A. C. 491; *Raleigh v. Goschen*, 1898, 1 Ch. 73; 77 L. T. 429. [*Mitchell v. Stuart*, 16 S. 409; *Lawson v. Stewart*, 14 F. 507; *Thomson v. Mitchell*, 1 Rob. Ap. 162.]

⁴ *Irwin v. Grey*, L. R. 1 C. P. 171;

2 H. L. 20; 35 L. J. C. P. 43; 36 *ib.* 148; and see *Terry v. Huntington*, Hard. 480, n.; *Whitfield v. Ld. Despencer*, Cowp. 754.

⁵ *Sutherland v. Murray*, cited in *Sutton v. Johnstone*, 1 T. R. 493.

⁶ *Per Erskine, arguendo, Sutton v. Johnstone, ubi sup.*; *Willes v. Bridger*, 2 B. & A. 286. [*Beaton v. Ivory*, 14 R. 1057.]

⁷ *Mitchell v. Tarbutt*, 5 T. R. 651.

⁸ *Fergusson v. Kinnoull*, 9 Cl. & F. 289.

⁹ *Hume v. Oldacre*, 1 Stark. 352; *Grindley v. Barker*, 1 Bos. & P. 229. [*Morrison*, 15 F. C. 279; *Bannerman v. Fenwicks*, 1 Mur. 253.]

action against one of several joint trespassers is a bar to an action against the others for the same cause, although such judgment remains unsatisfied.¹ But the cause of action must in both suits be identical.²

Connected with the subject of liability is the principle which was illustrated in the case of *Armory v. Delamirie*,³ namely, that contained in the maxim, "*Omnia præsumuntur contra spoliatorem*".

Every presumption shall be made to the disadvantage of a wrong-doer. If an officer use the powers which he possesses against an individual on any other than public grounds, he becomes a wrong-doer, and this principle is applicable. Where a person who wrongfully converted property, refused to produce it, it was presumed as against him to be of the best description.⁴ Where a person claimed a debt from another, the proof of which was to be found in certain documents which were sealed up and in his keeping, and he broke the packet without authority to do so, the claim was disallowed;⁵ and where a necklace was missed and part of it traced to the defendant, who was unable satisfactorily to account for it, the whole necklace was presumed to have come to his hands.⁶

EVIDENCE.

As to evidence, it is laid down that the fact that a person has acted in an official capacity is presumptive evidence of his appointment, and the formal appointment need not be proved⁷; and this rule applies to both civil and criminal cases.⁸

DAMAGES.

In general the damages will depend on the extent of the trespass or breach of duty committed. But where there is any high-handedness on the part of the officer, or attempt to use his powers unfairly to the prejudice of any member of the public, exemplary or vindictive damages will be recoverable;⁹ and these must depend on the particular circumstances of the case.¹⁰ And in such cases the court will not interfere with the discretion of the jury unless they are grossly excessive or clearly founded upon a mistaken or improper view of the matter.¹¹

¹ *Brinsmead v. Harrison*, L. R. 7 C. P. 547; 41 L. J. C. P. 19. [*Western Bank v. Baird*, 24 D. 859.]

² *Slade*, 4 Rep. 94 b; *Guest v. Warren*, 9 Ex. 379; 23 L. J. Ex. 121.

³ 1 Str. 504.

⁴ *Ibid.*

⁵ *Crisp v. Anderson*, 1 Stark, 35.

⁶ *Mortimer v. Cradock*, 12 L. J. C. P. 166; and see *Wardour v. Beresford*, 1 Vern. 452; *Sanson v. Ramsey*, 2 ib. 561; *Dalston v. Coatsworth*, 1 P. Wms. 731; *Gartside v. Ratcliffe*, 1 Ch. Cas. 292.

⁷ *McGahey v. Alston*, 2 M. & W. 211;

Marshall v. Lamb, 5 Q. B. 123; *Doe v. Young*, 8 ib. 63.

⁸ *McGahey v. Alston*, *ubi sup.*; *R. v. Gordon*, 1 Lea. 515; *R. v. Barrett*, 6 C. & P. 124.

⁹ *Merest v. Harvey*, 5 Taunt. 441.

¹⁰ *Brunswick v. Sloman*, 8 C. B. 321; 18 L. J. C. P. 299; *Huckle v. Money*, 2 Wils. 205. [*Hyslop v. Slaig*, 1 Mur. 20.]

¹¹ *Edgell v. Francis*, 1 M. & G. 222; 1 Sc. N. R. 121; *Tullidge v. Wade*, 8 Wils. 18. [*Snare v. Fife*, 14 D. 332.] *Reeves v. Penrose*, 26 Ir. C. L. 141.

There is no power to charge the damages and costs recovered against an officer upon the public funds¹; and it is the same with penalties.²

A sum due to an officer in respect of superannuation may, in the absence of direction by statute to the contrary, be attached in execution.³

Connected with the subject of damages is the doctrine of *Trespass ab initio*. Where a power to enter upon lands or tenements is conferred by law on an individual, and when he has entered in pursuance thereof he commits a misfeasance (*i.e.*, exceeds his authority), it shall be presumed that he entered with the intention of exceeding his authority, and that the trespass committed shall have relation back to the time of entering. In other words, whatever privilege he previously possessed is, by the excess, annulled.⁴

¹ *Stops v. Northampton, JJ.*, 4 Ti. L. J. Q. B. 24; 49 L. T. 471; 32 W. R. Rep. 78; *R. v. Exeter*, 6 Q. B. D. 135; 122.

cf. Att.-Genl. v. Pearson, 16 Jur. 651.

² *R. v. Wilts, JJ.*, 8 D. P. C. 717.

³ *Booth v. Trail*, 12 Q. B. D. 8; 53

⁴ *Six Carpenters*, 8 Coke, 146. This rule is unknown in S.

REMEDIES.

PROTECTION.

1. *Prerogative*.—The Crown may, in the case of action arising against any of its officers, for anything done to which it is a party,¹ demand a trial at bar, on the ground that it has an interest in the subject-matter of the suit.² In that case it will be for “the plaintiff to show the Court that it is misinformed,”³ and that the statement of the Attorney-General that the Crown is interested is groundless. If he fails to satisfy the Court as to this, the suit will become a Crown suit, and be regulated by the Crown Suits Act, 1865. The procedure in a Crown suit does not come within the scope of this work.

It may, however, be here observed that by the Crown electing to come in and defend, it necessarily takes upon itself the responsibility for the act complained of, on the ground of the maxim: “*Omnis rati-habitio retrahitur et mandato priori æquiparatur*.”⁴ But no damages can be obtained against the Crown, for “the Crown can do no wrong.”⁵ In the event, therefore, of judgment being given for the plaintiff, “the redress, if any, must be by petition of right, which is now regulated by 23 & 24 Vict. c. 34. Under sect. 9 of that Act, he obtains a judgment that he is entitled to such relief as the Court shall think just.”⁶

Where a party pursues both his civil and criminal remedies concurrently, it seems that the Attorney-General will not enter a *nolle prosequi* to the latter unless he is satisfied that they are vexatious or that they do not lie.⁷ A *nolle prosequi* appears to put an end to such proceedings.⁸

2. *Statutory Absolute*.—Constables are absolutely protected in the case of rioters being killed, maimed, or hurt while they are engaged in suppressing the riot.⁹

¹ See *ante*, p. 3.

² *Buron v. Denman*, 2 Ex. 167; *Dixon v. Farrar*, 18 Q. B. D. 43. On the Attorney-General waiving a trial at bar, he can demand a change of venue: 28 & 29 Vict. c. 104, s. 46. [As to S., see 20 & 21 Vict. c. 44, s. 3; 31 & 32 Vict. c. 95.] The Act does not apply to I.

³ *Per Tindal, C.J.; Paddock v. Forester*, 8 Dowl. 834; *Rowe v. Brenton*, 3 M. & R. 133.

⁴ *Buron v. Denman*, *ubi sup.*

⁵ 2 Rolle, Rep. 304.

⁶ *Per Blackburn, J.; Thomas v. The Queen*, L. R. 10 Q. B. 33; *Irwin v. Gray*, 3 F. & F. 635. See Clode on Petition of Right; 18 & 19 Vict. c. 90; I., 36 & 37 Vict. c. 69.

⁷ *Jones v. Clay*, 1 Bos. & P. 191; see *R. v. Fielding*, 2 Burr. 720.

⁸ *R. v. Allen*, 1 B. & S. 850; *R. v. Mitchell*, 3 Cox 93. [Private prosecution is practically unknown in S.]

⁹ 1 Geo. I. st. 2, c. 5, s. 3.

Customs and Excise officers are so protected for seizing goods as liable to forfeiture where there was probable cause for such seizure;¹ in stopping carts and waggons to search for smuggled goods, though none be found;² for firing into ships liable to seizure or examination;³ and for detaining ships under the Foreign Enlistment⁴ and Pacific Islanders Acts.⁵

A judge's certificate that there was probable cause for the seizure, covers the seizure only, and does not extend to damages for deterioration of the goods seized while in the officer's possession.⁶

The wreck receiver is so protected in case of a wreck where any person is killed, maimed, or hurt by reason of his resisting the receiver in the execution of his duty.⁷

And officers acting under the Explosives Acts are similarly protected where on reasonable cause to believe that any explosive, or ingredient of an explosive or substance found by them, is liable to forfeiture, they seize and detain the same.⁸

And so are officers generally acting under the Public Health Acts.⁹

3. *Statutory Ordinary*.—By 56 & 57 Vict., c. 61, s. 1, protection is afforded to all officers acting, or neglecting to act, in supposed execution of their public duties when any action, prosecution or other proceeding is commenced against them.

Statutes of this nature have been held to be "required for the purpose of protecting these officers in those cases where they intended to act within the strict line of their duty, but by mistake exceed it".¹⁰ Their object is "clearly to protect persons acting illegally, but in supposed pursuance and with a *bona fide* intention of discharging their duty."¹¹

The defendant is entitled to the protection if he honestly believes in the existence of a state of things which, if it had existed, would have justified his doing the acts complained of. Some facts must exist such as might give rise to an honest belief, but it is not necessary that the belief should be reasonable.¹²

A County Court officer is protected while acting under warrant of the Court, although there was no jurisdiction to make the order

¹ 53 & 54 Vict. c. 21, s. 29; and see c. 56, s. 2.

² 39 & 40 Vict. c. 36, s. 203.

³ Sect. 181.

⁴ 33 & 34 Vict. c. 90, ss. 28, 29.

⁵ 35 & 36 Vict. c. 19, s. 20; *Burns v. Nowell*, 5 Q. B. D. 444; 43 L. T. 342.

⁶ *Laugher v. Breffit*, 5 B. & Ald. 762; D. & R. 417.

⁷ 57 & 58 Vict. c. 60, s. 514.

⁸ 38 & 39 Vict. c. 17, s. 74.

⁹ *Ibid.* c. 55, s. 265; 54 & 55 Vict. c. 76, s. 124. [60 & 61 Vict. c. 38, s. 166.] I., 41 & 42 Vict. c. 52, s. 264;

and see as to fish, 54 & 55 Vict. c. 20, s. 5.

¹⁰ *Per* Kenyon, C.J.; *Greenway v. Hurd*, 4 T. R. 555. [*Ferguson v. McEwen*, 14 D. 457.]

¹¹ *Per* Ellenborough, C.J.; *Theobald v. Crichmore*, 1 B. & A. 229.

¹² *Chamberlain v. King*, L. R. 6 C. P. 474. See *Booth v. Clive*, 10 C. B. 827; *Smith v. Hopper*, 9 Q. B. 1014; *Beechey v. Sides*, 9 B. & C. 806; *Cann v. Clipperton*, 10 A. & E. 589; *Griffith v. Taylor*, 2 C. P. D. 194; 46 L. J. C. P. 15; 36 L. T. 5; 25 W. R. 196.

on which the warrant was founded.¹ And so is a tax-collector if he *bona fide* believe a sum demanded to be due.² But not if there was no colour for the demand, or he makes an improper seizure, and takes a bribe to deliver up the goods,³ or is guilty of extortion under threat of legal proceedings or distress.⁴

Protection is conferred whenever the officer purports to act in pursuance of the authority.⁵

It appears, however, to apply only to such acts as the officer might at the time have been called upon to perform.⁶ And the officer is not deprived of his right because he has received an indemnity against the consequences of his act by the party interested.⁷

An officer who takes under a County Court warrant the goods of B. by mistake for those of A. is entitled to protection.⁸

But where a constable is authorised to arrest a person found committing an offence, it must be shewn that at the time of the arrest he believed the offence to have been committed, and that he had found the person arrested in the act of committing it;⁹ unless taken *in flagrante delicto*, it must be shewn that an offence had been committed, that the plaintiff was on the spot, that there was reasonable ground for believing that the mischief was still going on, and that the plaintiff was the author and instigator of it.¹⁰

Officers sued to recover back money paid which had been by mistake illegally demanded, are protected,¹¹ and so are surveyors acting *bona fide* in a public capacity.¹²

The Act provides that no action shall be brought except within six months after the act complained of, or, in case of continuance of injury or damage, within six months after the ceasing thereof.¹³ An action is commenced at the issue of the writ.¹⁴ In false imprisonment, the time is reckoned exclusive of the day of discharge of the prisoner.¹⁵ Where constables searched under warrant without saying they were so authorised, the prescribed limitation was held to apply,¹⁶ and so was it where they took the goods of B. believing them to be

¹ *Aspey v. Jones*, 54 L. J. Q. B. 98; 33 W. R. 217.

² *Waterhouse v. Keen*, 4 B. & C. 211; 6 D. & R. 257.

³ *Irving v. Wilson*, 4 T. R. 486; *Spitty v. Kitchin*, 15 W. R. 908.

⁴ *Umphelby v. McLean*, 1 B. & A. 42. ⁵ *Cook v. Leonard*, 6 B. & C. 351.

See *R. Aquarium v. Parkinson*, 1892, 1 Q. B. 431; 66 L. T. 513.

⁶ *Bryson v. Russell*, 14 Q. B. D. 720; 51 L. T. 90; 33 W. R. 34.

⁷ *White v. Morris*, 11 C. B. 1015; 21 L. J. C. P. 185.

⁸ *Burling v. Harley*, 3 H. & N. 271; 27 L. J. M. C. 258.

⁹ *Roberts v. Orchard*, 2 H. & C. 769; 33 L. J. Ex. 65.

¹⁰ *Cann v. Clipperton*, *ubi sup.* See *Danvers v. Morgan*, 1 Jur. Ex. 1051.

¹¹ *Greenway v. Hurd*, 4 T. R. 553; *Selmes v. Judge*, L. R. 6 Q. B. 724; 40 L. J. Q. B. 287; 24 L. T. 905; 19 W. R. 1110.

¹² *Hardwick v. Moss*, 7 H. & N. 136; 31 L. J. Ex. 207.

¹³ See *Wordsworth v. Harley*, 1 B. & Ad. 391. [*Lundie v. Macbrayne*, 21 R. 1085.]

¹⁴ *Original Co. v. Gibb*, 5 Ch. D. 719; Order v., r. 11.

¹⁵ *Hardy v. Ryle*, 9 B. & C. 603. [*Melvin v. Wilson*, 9 D. 1129; *Lennox v. Rose*, 2 S. 650.]

¹⁶ *Smith v. Wiltshire*, 2 B. & B. 619. [*Hill v. Dymock*, 19 D. 955.]

those of A.¹ Where there has been a seizure of goods and a subsequent order for re-delivery, the time must be reckoned from the original seizure.²

Where the proceeding is an action for damages, tender of amends before the action was commenced may, in lieu of or in addition to any other plea, be pleaded.³ The payment of money into Court, by way of amends, does not necessarily conclude the plaintiff.⁴

In general, where judgment is for the defendant, it shall carry costs as between solicitor and client. Where the proceeding is an action for damages, if commenced after tender of amends, or proceeded with after payment into Court of any money in satisfaction of the plaintiff's claim and the plaintiff does not recover more than the sum tendered or paid, he shall not recover any costs incurred after the tender or payment, and the defendant shall be entitled to costs as between solicitor and client, as from the time of tender or payment, but this provision shall not affect costs of any injunction in the action. If, in the opinion of the Court, the plaintiff has not given the defendant a sufficient opportunity of tendering amends before the commencement of the proceeding, the Court may award to the defendant costs as between solicitor and client.⁵

Where the defendant makes an affidavit that the plaintiff if unsuccessful will be unable to pay costs, and the plaintiff fails thereupon to give security for such costs, the action may be remitted to the County Court.⁶

¹ *Parton v. Williams*, 3 B. & A. 330.

² *Saunders v. Saunders*, 6 R. R. 424.

³ Order xxii. and County Court Rules, 1889, Order ix. [As to S., 55 & 56 Vict. c. 55, ss. 506, 507.]

⁴ *Boyfield v. Porter*, 13 East 200.

⁵ 56 & 57 Vict. c. 61, s. 1; *Harrop v. Ossett*, 1898, 1 Ch. 525; *N. Met. Tramways v. London, C. C.*, *ib.* 2 Ch. 145. ["This Act does not exclude local S. Acts—s. 3."]

⁶ 51 & 52 Vict. c. 43, s. 66. No similar enactment in S. or I.

BREACH OF DUTY.

CIVIL PROCEEDINGS.

Action for Damages.

Where a person undertakes a public office, he is bound to perform the duties of the office, and if he neglects or refuses so to do, and an individual in consequence sustains injury therefrom, that lays the foundation for an action for damages to recover compensation for the injury so sustained.¹

When a duty or obligation exists at common law independently of a statute, a new remedy given by a statute is simply cumulative, and does not preclude the ordinary common law remedy by way of action, unless there are express words to that effect.²

When a statute creates a right or duty, then although it has not in express terms given a remedy, the remedy which by law is properly applicable follows as an incident.³ But if the right or duty is entirely the creature of the statute, and a specific remedy is provided by the statute for its enforcement, that remedy and that only must be pursued,⁴ unless the remedy does not cover the entire right.⁵

These principles apply apparently only when the duty to be performed is an absolute one, and not within the discretion of the officer. The rule as to liability may therefore be thus stated. Wherever the law confers upon an officer a power to do a certain act by an obligatory⁶ as distinguished from an enabling⁷ enactment, there is then a corresponding duty in the officer to perform the act required, in which if he fail, he will be liable to an action at the suit of the person who has sustained damage by reason of his default. On the other hand, if the duty is optional or discretionary, no such

¹ *Sutton v. Johnstone*, 1 T. R. 493; see *Holmes v. Sparkes*, 12 C. B. 251; *Fergusson v. Kianoull*, 9 Cl. & F. 279. 21 L. J. C. P. 194.

² *Chapman v. Pickersgill*, 2 Wils. 145. ⁶ *E.g.*, "is hereby required".

³ *Per Maule, B., Braithwaite v. Skinner*, 5 M. & W. 327. ⁷ *E.g.*, "may" or "it shall be lawful". See *Julius v. Oxford (Bishop of)*, 5 App. Cns. 214; *McDougall v. Paterson*, 11 C. B. 755; 21 L. J. C. P. 27; *Crake v. Powell*, 2 E. & B. 210; 21 L. J. Q. B. 183; *Bell v. Crane*, L. R. 8 Q. B. 481; 42 L. J. M. C. 122; *Re Newport Bridge*, 29 ib. 52.

⁴ *Stevens v. Jeacocke*, 11 Q. B. 741; 17 L. J. Q. B. 163; *St. Pancras Vestry v. Batterbury*, 2 C. B. N. S. 477; 26 L. J. C. P. 243.

⁵ *Shepherd v. Hills*, 11 Ex. 67. As to pleading in actions under statute,

liability (in the absence of malice) exists.¹ But to this there is an important qualification. "It has been so often decided as to have become an axiom, that in public statutes words only directory, permissive or enabling, may have a compulsory force where the thing to be done is for the public benefit or in advancement of public justice,² and this has been held to mean that where a power is deposited with a public officer for the purpose of being used for the benefit of persons who are specifically pointed out, and with regard to whom a definition is supplied by the legislature of the conditions upon which they are entitled to call for its exercise that power ought to be exercised, and the Court will require its exercise.³

In practice, however, where a duty is conferred, although it is possible, yet it is not very probable that action would arise owing to the fact that the plaintiff had sustained damage by reason of the officer's neglect.

But there is a notable exception in the case of civil execution. There a person is entitled to put an officer in motion to do a certain act or acts, and if he fails to perform the duty so required of him, it gives rise to this action.

[In Scotland, every officer of the law is bound to serve the lieges in the way of his office, on tender of his reasonable expenses. And like all persons who carry on business for hire, he must possess the necessary art and skill for performing it correctly, and he must give due and faithful attention to its performance, otherwise he and his cautioners will be liable for the damage sustained both by his employers and the opposite party.⁴ If he proceed notwithstanding a sist of which he has knowledge he will be liable. And so is he if the defenders' names be not properly inserted.⁵ He is absolutely bound to give a good execution, and if it be defective he will be liable.]⁶

The officers concerned in civil execution are the sheriff,⁷ the Admiralty marshal, and the high bailiff,⁸ who so far as liability is in question may be considered one,⁹ and constables.

As regards the sheriff, it has been laid down that if he neglect or refuse to execute any writ when he has the opportunity and is required to do so, he is liable,¹⁰ but that he is not liable for not using extraordinary exertion or providing against an unexpected or

¹ See *Partridge v. Council of Medical Education*, 25 Q. B. D. 90.

² *Per Coleridge, J., R. v. Tithe Commissioners*, 14 Q. B. 474.

³ *Per Cairns, C., Julius v. Oxford (Bishop of), ubi sup.*; and see the judgment of *Ld. Herschell in Cowley v. Newmarket*, 67 L. T. 488.

⁴ *Kennedy*, 1 S. 210.

⁵ *Clason v. Black*, 4 D. 743.

⁶ *Brock v. Kemp*, 6 D. 709. See *Potter v. Muirhead*, 9 D. 519; and as to general liability, *Dykes v. Strathers*,

VII. Bell App. C. 390. As to costs, 31 & 32 Vict. c. 100, s. 40.

⁷ [S. messenger-at-arms.]

⁸ [S. sheriff's officer.]

⁹ Judicature Act, 1873, s. 84; and see *Wms. & B. Ad. Prac.*, 2nd ed., p. 249; 51 & 52 Vict. c. 43, s. 35. [*Clyne v. Murray*, 9 S. 338.] I., see 30 & 31 Vict. c. 114, s. 10.

¹⁰ *Brown v. Jarvis*, 1 M. & W. 704; *Mason v. Paynter*, 1 Q. B. 974. [*King v. Stevenson*, H. 344; *Miller*, 15 F. C. 750; *Chatto v. Marshall*, 16 ib. 121; *Glen v. Black*, 4 D. 86.]

unforeseen contingency.¹ Accordingly, if he neglects to execute within a reasonable time,² or to seize,³ or to sell or sells for less money than he ought to have obtained,⁴ or sells the goods of a third person,⁵ or relinquishes or abandons possession,⁶ he is liable although mere temporary absence,⁷ or withdrawing under a proper order is not sufficient.⁸ So also is he if he negligently conduct a sale whereby the position of the execution creditor is prejudiced,⁹ or sells by private contract, when entitled to do so, before actual seizure,¹⁰ or retains the goods and pays the plaintiff,¹¹ or delivers the goods to the plaintiff in satisfaction of the debt,¹² or executes the writ and retains in his hands the proceeds.¹³ But the execution creditor cannot sue the sheriff before the issue of the *venditioni exponas*,¹⁴ nor is he liable if he sell under a *venditioni exponas*,¹⁵ under an extent which is in from the Crown at the same time.¹⁶

An application for an order against a sheriff to pay money levied under an execution must be made by motion after notice.¹⁷ And where he neglected to recover a claim was added to that of damages for money received by him to the plaintiff's use.¹⁸ The remedy of the landlord, however, is *in tort*, and not for money had and received.¹⁹

He is also liable if he make a false return—that is a return to the writ which does not describe accurately the position of affairs.²⁰ But if the sheriff merely return the answer of the bailiff which proves to be false, he is not, it appears, responsible.²¹ A writ is not now returned to by order, but a notice to return from the person issuing the writ or his solicitor issues.²² The return must answer

¹ *Hodgson v. Lynch*, 5 Ir. C. P. R. 353.

² *Clifton v. Hooper*, 6 Q. B. 468; 14 L. J. Q. B. 1; *Mason v. Paynter*, 1 Q. B. 974; 1 G. & D. 381. [*Wilson v. Snody*, 19 F. 268; *Gilchrist v. Sutherland*, M. 8892.]

³ *Pitcher v. King*, 5 Q. B. 766; D. & M. 584; 13 L. J. Q. B. 162. He must have notice that the goods are in his bailiwick; *Yourrell v. Proby*, 2 Ir. C. L. 460. As to replevin, *Sabourin v. Marshall*, 3 B. & Ad. 404; *Tessyman v. Gilbert*, 1 B. & P. 292.

⁴ *Jacobs v. Humphrey*, 2 C. & M. 413; 4 Tyr. 272; *Carlile v. Parkins*, 3 Stark. 163; *Gawler v. Chaplin*, 2 Ex. 506; 18 L. J. Ex. 42.

⁵ *Oughton v. Seppings*, 1 B. & Ad. 241.

⁶ *Blades v. Arundale*, 1 M. & S. 711; *Bower v. Hett*, 1895, 2 Q. B. 337. [In S. the officer cannot discharge the debt unless expressly authorised. Camp. cap. xxxvi.] See *Davidson v. Allen*, 20 Q. B. Ir. 16.

⁷ *Ackland v. Paynter*, 8 Price, 99.

⁸ *Darby v. Waterlow*, L. R. 3 C. P.

453; 37 L. J. C. P. 203; 16 W. R. 864; 18 L. T. 523. [*Cullen v. Smith*, 9 D. 606; *Ferrier v. Aitken*, 2 S. 513]; *Nixon v. Maguire*, 5 C. L. Ir. 92.

⁹ *Mullett v. Challis*, 16 Q. B. 239; 20 L. J. Q. B. 161.

¹⁰ *Ex parte Hall*, 14 Ch. D. 132; *Ex parte Villars*, 9 Ch. Ap. 432.

¹¹ *Waller v. Weedale*, Noy. 107.

¹² *Thompson v. Clerk*, Cro. Eliz. 514.

¹³ *Perkinson v. Guildford*, Cro. Car. 539; W. Jon. 430.

¹⁴ *Clutterbuck v. Jones*, 15 East 78; *Ruston v. Hatfield*, 2 B. & A. 204.

¹⁵ *Swain v. Morland*, 1 B. & B. 370; Gow. 39; Moo. 740.

¹⁶ *Thurston v. Mills*, 16 East 254.

¹⁷ Order lii., rr. 2, 3; and see *Delmar v. Freemantle*, 3 Ex. D. 237.

¹⁸ *Bower v. Hett*, *ubi sup.*, see *post*, p. 187.

¹⁹ *Green v. Austen*, 3 Camp. 260.

²⁰ *Wylie v. Birch*, 4 Q. B. 566; [*Glen v. Black*, 4 D. 36]; *Kelly v. Browne*, 12 Ir. App. 354.

²¹ *Jackson v. Hill*, 10 Ad. & E. 477; 2 P. & D. 455; and see *ante*, p. 155.

²² Order lii., r. 11.

the whole mandate of the writ. He may return *nulla bona* where the debtor has an equitable interest only,¹ and also where the proceeds are exhausted in payment of prior rent and charges;² but not where there are goods in his hands unsold,³ nor where he ought to have levied and neglected to do so.⁴ If he returns that he has seized certain goods, he ought to specify their value;⁵ but he cannot return that a house is barricaded and he cannot enter to see what goods are there,⁶ nor return rescue.⁷

In order to claim the benefit of the Interpleader Act he must be in possession of the goods⁸ as a whole,⁹ unless the property would be injured by seizure.¹⁰ He must not be an interested party,¹¹ nor have been indemnified,¹² but he need not wait for an action to be brought.¹³ Where he has exercised his discretion he is not entitled to relief,¹⁴ nor where he is guilty of neglect¹⁵ or laches,¹⁶ except under special circumstances.¹⁷ He must inquire into the *bona fides* of the claims before applying for relief.¹⁸

For neglect of duty the representatives of a deceased sheriff are also liable.¹⁹

An action against the sheriff in these cases cannot be maintained without shewing actual pecuniary damage,²⁰ but where damages are alleged and proved, they are recoverable without proof of malice or want of probable cause.²¹

[In Scotland it is no defence to shew that the goods had been seized by the Crown and were sealed up under a writ of extent, or that the party was rendered notour bankrupt by sequestration within one month.²² But the instructions must be precise.²³ It is

¹ *Scarlett v. Hanson*, 12 Q. B. D. 218; 53 L. J. Q. B. 62; 32 W. R. 310.

² *Windle v. Freeman*, 11 A. & E. 539; *Shatlock v. Carden*, 6 Ex. 725; *Needham v. Kelly*, 3 L. R. Ir. 181.

³ *Slade v. Hawley*, 13 M. & W. 757; *Harton v. Ballinrobe*, 11 L. R. Ir. 24.

⁴ *Dennis v. Whetham*, L. R. 9 Q. B. 345; 43 L. J. Q. B. 129; 30 L. T. 514; 22 W. R. 571.

⁵ *Barton v. Gill*, 12 M. & W. 315.

⁶ *Monk v. Cass*, 9 Dowl. 332.

⁷ *Wat.*, p. 97.

⁸ *Inland v. Bushell*, 5 Dowl. 147; 2 H. & W. 118; *Scott v. Lewis*, 4 Dowl. 259; 2 C. M. & R. 289.

⁹ *Braine v. Hunt*, 2 Dowl. 391; 2 C. & M. 418; *Moore v. Hawkins*, 43 W. R. 235.

¹⁰ *Lea v. Rossi*, 11 Ex. 13; 24 L. J. Ex. 280.

¹¹ *Braddick v. Smith*, 9 Bing. 84; *Ostler v. Bower*, 4 Dowl. 605; 1 H. & W. 653.

¹² *Ibid.*

¹³ *Green v. Brown*, 3 Dowl. 337. This process does not apply when the

right of the Crown is in question; *Candy v. Mangham*, 13 L. J. C. P. 17.

¹⁴ *Crump v. Day*, 4 C. B. 760.

¹⁵ *Brackenbury v. Laurie*, 3 Dowl. 180.

¹⁶ *Crump v. Day*, *ubi supra*.

¹⁷ *Dixon v. Ensell*, 2 Dowl. 621.

¹⁸ *Bishop v. Hinxman*, 2 *ib.* 166; *Sodean v. Shorey*, 74 L. T. 240; *Order lvii.*, rr. 16, 16a, 17.

¹⁹ *Packington v. Culliford*, 1 Roll. 921; *Ex. pl. H. 2*; *Adair v. Shaw*, 1 Sch. & Lef. 265. [*Morrison v. Cameron*, 15 F. C. 279.]

²⁰ *Hobson v. Thellusson*, L. R. 2 Q. B. 642; 36 L. J. Q. B. 302; 15 W. R. 1037; 16 L. T. 837; *Stinson v. Farnham*, L. R. 7 Q. B. 175; 41 L. J. Q. B. 52; 25 L. T. 747; 20 W. R. 183; *Moon v. Raphael*, 2 Sc. 489; 7 C. & P. 115.

²¹ *Brasyer v. Maclean*, L. R. 6 P. C. 398; 33 L. T. 1.

²² *Chatto*, 16 F. C. 121.

²³ *Winterbottom*, 2 S. 542; *Ferrier*, *ib.* 601.

no answer that delay has not produced damage.¹ The law presumes that had the instructions been obeyed the debt would have been recovered.]

In an action for a false return, the sheriff may shew the facts in support of his defence,² but he cannot go into circumstantial evidence to impeach the judgment on the ground of collateral fraud.³

Admissions of the bailiff in these cases are evidence against the sheriff,⁴ but not those of the under-sheriff, unless they accompany some official act or tend to charge himself.⁵

The measure of damages in cases of neglect of duty by the sheriff is usually the value of the goods.⁶ The plaintiff is entitled to be placed in the same position as if the defendant had done his duty.⁷ But regard must be had to all the probabilities.⁸

By 56 Geo. III. c. 50, s. 9, the sheriff is not liable for damages for anything done under that Act⁹ unless there be wilful omission on his part.

By 50 & 51 Vict. c. 55, s. 29, the sheriff or his officer for any breach of the provisions of the Act or neglect or default in the execution of his office is liable to forfeit £200 and to pay all damages suffered by any person aggrieved.¹⁰ This applies apparently only to personal misconduct or neglect on the part of the officer actually guilty thereof, and in such case the sheriff, therefore is not responsible for the act of his officer,¹¹ and it does not apply to mere wrongful seizure,¹² nor to an unintentional overcharge.¹³

But if he make out a warrant prior to the receipt of the writ this action will lie against him,¹⁴ and so also will it if he omit to appoint a deputy.¹⁵

As has been above stated, the liability of the Admiralty marshal is identical with that of the sheriff.

As regards the high bailiff, besides the ordinary liability which is the same as that of the sheriff it is enacted that:—

In case any bailiff who shall be employed to levy any execution against goods and chattels shall by neglect or connivance or omission lose the opportunity of levying any such execution, then, upon complaint of the party aggrieved by reason of such neglect, connivance

¹ *Wilson v. Snody*, 19 F. C. 268; *Gilchrist v. Sutherland*, *ubi sup.*

² *Wintle v. Freeman*, *ubi supra*.

³ *Tyler v. Duke of Leeds*, 2 Stark. 222.

⁴ *North v. Sheriff of Middlesex*, 1 Camp. 389.

⁵ *Snowball v. Goodericke*, 4 B. & Ad. 541.

⁶ *Tyler v. Leeds*, *ubi supra*. [In S. it is the debt: *Gilchrist v. Sutherland*, *ubi sup.*]

⁷ *Crowder v. Long*, 8 B. & C. 898; *Heenan v. Evans*, 3 M. & Gr. 898; *Augustien v. Challis*, 1 Ex. 279.

⁸ *Hobson v. Thellusson*, *ubi sup.* [Hoog, M. 10096.]

⁹ *Ante*, p. 72.

¹⁰ See 21 Jac. 1, c. 4, s. 4; and *Spencer*, 3 M. & W. 154; *Jones v. Williams*, 4 *ib.* 375. I., see 57 Geo. III. c. 68, s. 3.

¹¹ *Bagge v. Whitehead*, 1892, 2 Q. B. 355; 66 L. T. 815.

¹² *Lee v. Dangar*, 1892, 2 Q. B. 337; 66 L. T. 548.

¹³ *Shoppes v. Nathan*, 1892, 1 Q. B. 245.

¹⁴ *Hall v. Roche*, 8 D. & E. 187.

¹⁵ *Brackenbury v. Laurie*, 3 Dowl. 180.

or omission (and the fact alleged being proved to the satisfaction of the Court on the oath of any credible witness), the judge shall order such bailiff to pay such damages as it shall appear that the plaintiff has sustained thereby.¹

This power of the judge does not extend over the high bailiff of a foreign Court.²

The only case in which constables are employed in civil execution at the suit of an individual is that for the recovery of tenements.³

And, as regards other officers, it has been held that an action lies against a postmaster for non-delivery of letters,⁴ and a collector of customs for refusing to sign a bill of entry without payment of an excessive duty,⁵ and a highway surveyor for leaving large stones on a road under repair so placed as to cause an obstruction.⁶ But he is not bound to remove nuisances,⁷ nor liable for mere non-repair.⁸ It lies also against a minister for refusing admission to the church on proper occasions,⁹ or for removing without authority a monument appended to the wall of the church,¹⁰ and against churchwardens for refusing admission to the church at service time of a parishioner.¹¹

As to evidence, if it is withheld it renders the maxim *Omnia præsumuntur contra spoliatores* applicable.¹² Where a party has the means in his power of rebutting and explaining the evidence against him, if it does not tend to the truth, the omission to do so furnishes a strong inference against him.¹³ Where a public officer produces an instrument the execution of which he was bound to procure, as against him it is presumed to have been duly executed.¹⁴ And if it be defaced or destroyed slight evidence of the contents will usually be sufficient.¹⁵ The general rule in these cases is that the law excludes such evidence as from the nature of the thing, supposes still better evidence in the party's possession or power.¹⁶

¹ 51 & 52 Vict. c. 43, s. 49; *Watson v. White*, 1896, 2 Q. B. 9. [No similar enactment in S. or I., but see *Couper v. Bain*, 7 M. 102.]

² *R. v. Shropshire County Court*, 20 Q. B. D. 242; 58 L. T. 86.

³ 1 & 2 Vict. cc. 74 and 119, and 14 & 15 Vict. c. 92.

⁴ *Rouning v. Goodchild*, 2 W. Bl. 906; *Scott v. Shearman*, *ib.* 977. But see *Hordern v. Dalton*, 1 C. & P. 181.

⁵ *Barry v. Arnaud*, 10 A. & E. 646; 2 P. & D. 633.

⁶ *Fearnley v. Ormsby*, L. R. 4 C. P. D. 136.

⁷ *Morgan v. Leach*, 10 M. & W. 558; 12 L. J. M. C. 4.

⁸ *Young v. Davis*, 2 H. & C. 197; 9 L. T. 145.

⁹ *Lee v. Matthews*, 3 Cons. 173.

¹⁰ 1 Inst. 18 b.

¹¹ *Taylor v. Timson*, 20 Q. B. D. 671; 57 L. J. Q. B. 266. [As to refusal to accept bail, see *Andrew v. Murdoch*, 2 S. 399.]

¹² See *ante*, p. 163.

¹³ 3 Stark. Evidence, 3rd ed., p. 937.

¹⁴ *Scott v. Waithman*, 3 Stark. N. P. C. 168; *Plumer v. Brisco*, 11 Q. B. 52.

¹⁵ 1 Phil. Evidence, 10th ed., pp. 477, 478.

¹⁶ *Twyman v. Knowles*, 13 C. B. 222; *Lumley v. Wagner*, 1 De G. M. & G. 604, 633.

CRIMINAL PROCEEDINGS.

Attachment.

In the case of the sheriff, Admiralty marshal, and high bailiff, all of whom are officers of the Court, this remedy is open to any person aggrieved by the neglect to perform the duty required of them.¹

By 50 & 51 Vict. c. 55, s. 29, if any sheriff, under-sheriff, bailiff, or officer of a sheriff is guilty of any breach of the provisions of the Act, or of any neglect or default in the execution of his office, he may be punished by the Court as for a contempt.²

In regard to the Admiralty marshal, as he is now an officer of the High Court, his liability is identical with that of the sheriff.³

As to the high bailiff, it is laid down by 51 & 52 Vict. c. 45, s. 131, that in case of refusal to act, any party requesting the act to be done may apply to the High Court for an order calling on the officer to shew why it should not be done, and that upon the officer's then making default, attachment may issue.⁴

The incidents of attachment will be found stated below in the next chapter.⁵

Information.

In the case of all officers other than those mentioned under the head of *attachment*, the remedy under the criminal law for breach of duty is by information at the suit of the party grieved.

The majority of statutes which confer powers include penalties for breaches of public duty by the officers on whom the powers are conferred.

Every public officer commits a misdemeanour who wilfully neglects to perform any duty which he is bound either by common law or by statute to perform, provided that the discharge of such duty is not attended with greater danger than a man of ordinary firmness and activity may be expected to encounter.⁶ Breaches of public

¹ Of course all officers who refuse to obey the mandates of the Courts are like other persons liable to attachment or committal. See *R. v. Winton*, 5 T. R. 89. An order for attachment or committal must be applied for on notice, Order xlv., r. 2; *Jupp v. Cooper*, 5 C. P. D. 26; *Eynde v. Gould*, 9 Q. B. D. 335; *Fowler v. Ashford*, 45 L. T. 46. [As to S., see note *post*, p. 208.] *Rourke*

v. Davey, 9 L. R. Ir. 257; *Richardson v. Donegal*, Batty 591.

² See Hawk. P. C. II. c. 22, ss. 2, 3, 4.

³ Judicature Act, 1873, s. 84.

⁴ [1 Vict. c. 41, s. 34.] L., 27 & 28 Vict. c. 99, s. 6.

⁵ *Post*, p. 208.

⁶ Steph. Dig. Crim. Law, Art. 122; *R. v. Pinney*, 5 C. & P. 254; 3 B. & Ad. 946.

duty are not, however, remediable at the suit of a private individual, unless he is able to prove that he has sustained actual damage by reason thereof.¹ An instance of breach of public duty is the withholding of material evidence. This is presumably perjury.² A constable is bound to state in cross-examination if required by the judge or presiding magistrate to do so, the circumstances under which he had seen the facts to which he testified.³ Another instance is where an officer refuses admission to a lock-up or place of detention, of a counsel or solicitor for a prisoner awaiting trial who is retained for his defence, or other person properly claiming to be admitted,⁴ or refuses to take bail when required by law to do so,⁵ and a gaoler is liable who refuses to give within six hours a copy of the commitment of any prisoner in his custody.⁶

It has been held, however, that an indictment does not lie against a highway-surveyor for non-repair of the highway,⁷ but he may be summoned for this⁸ or for allowing heaps to remain on the highway at night to the danger of passengers,⁹ or for damaging mills, etc.,¹⁰ or neglect to fill up pits.¹¹

Mandamus.

A word should be here inserted on *mandamus*. It is a prerogative writ issuing in the Queen's name and directed to a public officer requiring him to do a particular thing appertaining to his office and duty.¹² In its application it is confined to cases where no effectual relief can be obtained in the ordinary course of an action.¹³ And inasmuch as the cases in which damages could occur on account of breach of duty which are not obtainable by action are very rare; it is a remedy which for practical purposes need not be further discussed.¹⁴

¹ See *Soltan v. De Held*, 2 Sim. N. S. 183. [In S. private prosecution is practically unknown.]

² *Hawk. P. C. I. c. 69, s. 2.*

³ *R. v. Richardson*, 3 F. & F. 693; *Webb v. Catchlove*, 82 L. T. (N.) 103. See *Marks v. Beyfus*, 25 Q. B. D. 494; 63 L. T. 733. [*Steven v. Dundas*, M. 7905; *Henderson v. Robertson*, 15 D. 292; *Hill v. Fletcher*, 10 D. 7.]

⁴ See 40 & 41 Vict. c. 21, r. 56. In S. & I. this is provided for by rules.

⁵ See *ante*, p. , and *R. v. Badger*, 4 Q. B. 468.

⁶ 31 Car. II. s. 5 [1701 c. 6].

⁷ *R. v. Dixon*, 12 Mod. 198.

⁸ 5 & 6 Will. IV. c. 50, s. 94. [41 & 42 Vict. c. 51, s. 123.]

⁹ *Fearnley v. Ormsby*, L. R. 4 C. P. D. 136.

¹⁰ 5 & 6 Will. IV. c. 50, ss. 56, 57, 72. No similar enactments *semble* in S. or I.

¹¹ Sect. 55.

¹² Steph. Comm., 8th ed., III. 615; *R. v. Bank of England*, 2 B. & Ald. 622.

¹³ *R. v. Chester*, 1 T. R. 396; *Ex parte Robins*, 1 W. W. & H. 578; *In re Nathan*, 12 Q. B. D. 461.

¹⁴ See *R. v. Fox*, 2 Q. B. 246; *R. v. Scott*, *ib.* 248, n.; and *R. v. Wilts, JJ.*, 8 Dowl. P. C. 717. Order liii. [unknown in S.]

EXCESS OF POWER.

Self-Defence.

The first remedy which the law permits a man, against whom an excess of legal authority is being committed, to resort to, is that which can be applied on the spur of the moment—namely, self-defence. The law in reference thereto is as follows: It sanctions the defence of a man's person, liberty and property against illegal violence, and permits the use of force to prevent crimes . . . yet all this is subject to the restriction that the force used is necessary, that is, that the mischief sought to be prevented could not be prevented by less violent means, and that the mischief done by, or which might reasonably be anticipated from the force used is not disproportioned to the injury or mischief which it is intended to prevent.¹ But the defence of possession either of goods or lands against a mere trespass not a crime, does not, strictly speaking, justify even a breach of the peace. The party in lawful possession may justify gently laying his hands on the trespasser and requesting him to depart. If the trespasser resists, and in so doing assaults the party in possession, that party may repel the assault, and for that purpose may use any force which he would be justified in using in defence of his person.²

The rule that a man shall retreat from an assailant before he uses force applies only to the use of such force as may inflict grievous bodily harm or death.³ If an officer be killed while exceeding his authority it is manslaughter only.⁴

*Fabrication of Evidence.*⁵

It will be convenient to insert here a few words on this head.

The fabrication of evidence, from a civil point of view, renders the maxim *Omnia præsumuntur contra spoliatores* applicable to the case.⁶ From a criminal point of view, if it consists in procuring

¹ Crim. Code Rept., p. 11. See *Beatty v. Gilbanks*, ante, p. 37; *McCle-naghan v. Waters*, *Times*, 18th July, 1882.

² C. C. Report, p. 45. [*Macfarlane v. Young*, 3 Mur. 408.]

³ 1 Hawk. P. C. c. 28, s. 24.

⁴ *Dixon*, 1 E. P. C. 313; *Tooley*, 2 Ray. 1296.

⁵ Fabrication is not entirely un-
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known as a government expedient for political ends. The only remedy in such cases is a ceaseless vigilance by an enlightened public over the acts and proceedings of officers of all kinds.

⁶ See ante, p. 163, and *Broom Leg. Max.*, 5th ed., 939, 942; and *per Moun-tenay*, B., 17 How. St. Tr. 1430; *Norden's Case*, Fost. Cr. Law, 129.

false witnesses, it is subornation of perjury, and if the party tampered with does not actually take an oath, the person inciting him so to do, though not guilty of subornation, is still liable to punishment.¹ In cases other than witnesses it is a misdemeanour at common law.²

Of fabrication, the following are examples: Placing a pistol-ball in a tree in order to shew that a pistol, when discharged, was loaded with ball; soiling clothes to give the appearance of a struggle; fitting shoes to marks in earth or snow to connect the owner of the shoes with the offence; planting on a person or on his premises articles, the possession of which is unlawful, or shews a connection with an offence; putting a portion of a newspaper into the pocket of a prisoner, his clothes being detained at a police station, the corresponding portion being found at the scene of the crime; tampering with witnesses, including that of inducing another officer to swear falsely as to a fact.

The procuring of evidence by improper means does not appear to be either actionable or an offence. The remedy would seem to be complaint to the authorities, unless it amounts to inciting to commit offences.³

CIVIL PROCEEDINGS.

Assault and Battery.

An assault is an attempt or offer to beat another without touching him, as if one lifts up a cane or his fist in a threatening manner at another or strikes at but misses him.⁴ A battery (which includes an assault) is the unlawful beating of another—the least touching of another's person wilfully or in anger,⁵ and this whether with the person or with any missile or weapon.⁶

The fact of an assault being unintentional does not make it less an assault;⁷ but it may be urged in mitigation of damages;⁸ but if the act be neither wilful nor negligent no action will lie.⁹

In the following cases it was held that an assault had been committed:—

Where A was advancing in a threatening attitude with an intention to strike B, so that his blow would have almost immediately reached B if he had not been stopped, though at the particular moment when A was stopped he was not near enough for his blow to take effect.¹⁰ An examination by medical men in pursuance of an

¹ 1 Hawk. P. C. c. 69, s. 2.

² Crim. Code Rept., p. 21; *R. v. Vreones* [1891], 1 Q. B. 360; 39 W. R. 364; 60 L. J. 62.

³ See *post*, p. 214, and *R. v. Merthyr*, 10 R. 256. As to using such evidence, see [*Ratray*, 25 R. 315].

⁴ 3 Black. 120. [*Hyslop v. Staig*, 1 Mur. 20.]

⁵ 3 Black. 120. [*Hyslop v. Staig*, 1 Mur. 20.]

⁶ *Russell v. Horne*, 8 A. & E. 602.

⁷ *Covell v. Laming*, 1 Camp. 477.

⁸ *James v. Campbell*, 5 C. & P. 373.

⁹ *Stanley v. Powell*, 7 T. L. R. 25.

[*Macfarlane v. Young*, *ubi sup.*]

¹⁰ *Stephens v. Myers*, 4 C. & P. 349.

order of a magistrate of the person of a female in custody upon the charge of concealing the birth of her illegitimate child.¹ Riding after a person and obliging him to run away into a garden to avoid being beaten.² Striking a man in a crowd for refusing to stand back, which he was unable to do for the crowd behind him,³ or for interfering with an officer engaged in preventing a breach of the peace.⁴ Where plaintiff being in defendant's workshop and refusing to quit when desired, the defendant and his servants surrounded him and threatened to break his neck if he did not go out, whereupon the plaintiff, apprehensive of violence, departed.⁵ Where a constable stopped a cyclist riding without light after nightfall.⁶

A threat to shoot a person, coupled with the act of presenting a loaded firearm at him, although it is half-cocked.⁷

In the following cases, no assault was held to have been committed:—

Where A comes up to attack B, and B puts himself into a fighting attitude to defend himself.⁸ Presenting a loaded pistol, coupled with words shewing no intention to shoot the plaintiff.⁹ Where A seized the bridle of the horse on which B was riding, and B, after a request to desist, struck A with his riding-whip, using no more force than was necessary to obtain his release.¹⁰ Where a constable was wholly passive and merely obstructed the entrance of a person into a room as any inanimate object would,¹¹ or where an officer of a local fire-brigade excluded a person in pursuance of orders from premises on which a fire was raging.¹²

As regards threatening gestures, if the parties at the time the gestures are used are so far distant from each other that immediate contact is impossible, there is no assault.¹³

With reference to procedure it is laid down that where the assault has been heard and determined by justices, a certificate by such justices of conviction or acquittal is a bar to all further proceedings.¹⁴ Such a certificate cannot be granted on an *ex parte* statement,¹⁵ but to be valid it need not be granted at the time the summons is heard.¹⁶

¹ *Agnew v. Jobson*, 14 C. C. C. 625; 47 L. J. M. C. 67.

² *Martin v. Shoppee*, 3 C. & P. 373. [*Ewing v. Mar*, 14 D. 314.]

³ *Imason v. Cope*, 5 ib. 193.

⁴ *Levy v. Edwards*, 1 C. & P. 40.

⁵ *Read v. Coker*, 13 C. B. 859; 22 L. J. C. P. 205; 17 Jur. 990.

⁶ *Hatton v. Treeby*, 1897, 2 Q. B. 452; 77 L. T. 309.

⁷ *Osborne v. Veitch*, 1 F. & F. 317.

⁸ *Moriarty v. Brooks*, 6 C. & P. 684. [*Lang v. Lillie*, 4 Mur. 86.]

⁹ *Blake v. Barnard*, 9 C. & P. 626.

¹⁰ *Rowe v. Hawkins*, 1 F. & F. 91.

¹¹ *Jones v. Wylie*, 1 C. & K. 257. [*Wallace v. Money*, 12 R. 710.] See *Coyne v. Tweedy*, 1898, 2 I. R. 167.

¹² *Carter v. Thomas*, 1893, 1 Q. B. 673; 69 L. T. 436.

¹³ *Cobbett v. Grey*, 4 Ex. 744; 19 L. J. Ex. 137. [*Mackintosh v. Squair*, 40 J. 561.]

¹⁴ 24 & 25 Vict. c. 100, ss. 44, 45. See *Holden v. King*, 46 L. J. Ex. 75; 35 L. T. 479; 25 W. R. 72; and *Masper v. Brown*, 1 C. P. D. 97; 45 L. J. C. P. 203; 34 L. T. 254; 24 W. R. 369; *Dyer v. Munday*, 1895, 1 Q. B. 722; 72 L. T. 248. The above-cited Act does not apply to S.

¹⁵ *Reed v. Nutt*, 24 Q. B. D. 669; 59 L. J. Q. B. 311; 62 L. T. 635; 38 W. R. 621.

¹⁶ *Hancock v. Somes*, 28 L. J. M. C. 196; *Costar v. Hetherington*, ib. 198.

In a civil action, that the defendant consented to the assault is a good defence,¹ and therefore the defence of leave and licence amounts to not guilty.² The defence to complete justification must answer severally the assaults specified in the claim.³ That of *molliter manus imposuit* is a good defence to a battery.⁴ But if there be violence it is negatived.⁵ As to the defence of *son assault demesne*, this admits the assault.⁶ But it is a good defence provided there be no excess.⁷ Where A and B are joint defendants, that does not prevent A pleading a justification to another and separate assault.⁸

To justify a battery the defendant must shew that there was an unlawful resistance on the part of the plaintiff to the lawful acts of the defendant.⁹ A sheriff's officer, it has been held, can only justify laying his hand upon a man in order to arrest him on a writ of process,¹⁰ or in case of resistance or an attempt to rescue him.¹¹ A plea justifying an assault on the ground that it was committed in dispersing a meeting, must either allege as a fact that the meeting was unlawful, or state facts from which its unlawfulness can be inferred.¹² Where plaintiff sued defendant for assault in taking him under a *habeas corpus*, after he had requested him not to do so, the writ having issued at the instance of the plaintiff, there being no sufficient evidence that the defendant knew at whose instance the writ issued, the assault was held justifiable.¹³ Upon issue taken on a plea of *son assault demesne* it is necessary to prove an assault commensurate with the trespass sought to be justified.¹⁴ But the defendant may give evidence of an assault by the plaintiff without this plea.¹⁵ And in any action of assault, though he has not pleaded justification, he may in cross-examination extract evidence in mitigation of damages.¹⁶

As to damages, the Court will seldom interfere with the discretion of the jury, and the jury may take into consideration circumstances which go to aggravate or mitigate the injury sustained.¹⁷

¹ *R. v. Coney*, 8 Q. B. D. 534; 51 L. J. M. C. 66; 46 L. T. 307; 30 W. R. 678. [*Beatson v. Drysdale*, 2 Mur. 153.]

² *Christopherson v. Barr*, 11 Q. B. 473; 17 L. J. Q. B. 109.

³ *Bush v. Barker*, 4 M. & Sc. 588.

⁴ *Titley v. Foxall*, 2 Ld. Ken. 308.

⁵ *Oakes v. Wood*, 2 M. & W. 791; M. & H. 237; *Gregory v. Hill*, 8 T. R. 299; *Johnson v. Northwood*, 1 Moo. 420; 7 Taunt. 689. [*Macfarlane v. Young, ubi sup.*]

⁶ *Hay v. Kitchen*, 1 Wils. 171.

⁷ *Blunt v. Beaumont*, 2 C. M. & R. 412; 4 D. P. C. 219; *Dean v. Taylor*, 11 Ex. 66. See *Rimmer v. Rimmer*, 16 L. T. 238.

⁸ *Kearney v. Tottenham*, 15 W. R. 1020.

⁹ *Gregory v. Hill, ubi sup.*

¹⁰ *Harrison v. Hodgson*, 10 B. & C. 445.

¹¹ 1 Ray. 222; 2 Str. 1049.

¹² *O'Kelly v. Harvey*, 10 Ir. L. R. 285.

¹³ *Hemming v. Hudson*, 8 Ex. 107.

¹⁴ *Reece v. Taylor*, 4 N. & M. 470; 1 H. & W. 15.

¹⁵ *Syers v. Chapman*, 2 C. B. N. S. 438.

¹⁶ *Moore v. Adam*, 2 Chit. 198; *Linford v. Lake*, 3 H. & N. 276; 27 L. J. Ex. 334; *De Gondonin v. Lewis*, 10 A. & E. 120.

¹⁷ *Tullidge v. Wade*, 8 Wils. 18; *Perkins v. Vaughan*, 4 M. & G. 989; 7 Sc. N. R. 886; *Speck v. Phillips*, 5 M. & W. 281; 7 Dowl. 470. [*Forgie v. Henderson*, 1 Mur. 418.]

Where the assault has been carried to the extent of *mayhem* or wounding, heavy damages will be recoverable unless it be excused or justified.¹ Wherever the wrong is of a grievous nature, done with a high hand, or is accompanied with a deliberate intention to injure, or with words of contumely and abuse, the jury are authorised in giving vindictive damages.²

This action must be commenced within four years next after the cause of such action.³

Extortion.

The cases which arise under this head are, as in the case of action for damages,⁴ mainly those concerned with civil execution. It will be advisable, therefore, to set out here the fees and charges which are payable to officers concerned in this process.

Those of other officers where there are any, will be found stated with the powers enumerated in former parts of the work.

As regards the sheriff, he is entitled to charge the fees and poundage which were charged, prior to the Sheriffs Act, 1887, until altered in pursuance of this Act.⁵

The poundage allowed is for the first £100, 5 per cent., and afterwards $2\frac{1}{2}$ per cent.⁶

The fees are as follows:—⁷

For every warrant which shall be granted by the sheriff to his officer upon any writ or process:—

	£	s.	d.
In London or Middlesex	0	2	6
And on outlawry process, an additional	0	2	6
In other counties, where the most distant part of the county shall not exceed 100 miles from London	0	5	0
Not exceeding 200 miles	0	6	0
Exceeding 200 miles	0	7	0
Where there are several defendants in a writ of <i>capias</i> , and warrants are issued thereon by the under-sheriff against more than one defendant, no more shall be charged in any case for each warrant, after the first, than	0	2	6
For an arrest in London	0	10	6
In Middlesex, not exceeding one mile from the G. P. O.	0	10	6
Not exceeding seven miles from the same place	1	1	0
In other counties, not exceeding a mile from the officer's residence	0	10	6

¹ Bac. Ab. *Mayhem*.

² *Thomas v. Harris*, 27 L. J. Ex. 353.

³ 21 Jac. I. c. 16, s. 3. [As to costs S., see 31 & 32 Vict. c. 100, s. 40.]

⁴ *Ante*, p. 170, and see 7 & 8 Vict. c. 19; [1 & 2 Vict. c. 118, s. 20; 6 Geo. IV. c. 48, s. 19]; I., 27 & 28 Vict. c. 99, s. 15.

⁵ 50 & 51 Vict. c. 55, ss. 20, 39.

⁶ 29 Eliz. c. 4. Poundage is limited to civil process: *R. v. Sheriff of Devon*, 3 Dowl. 10; *R. v. Palmer*, 2 East 411—except where the debt is due to the

Crown and is secured by a penalty which the levy does not exceed: *R. v. Dean*, 2 Anst. 369; or where the Crown is entitled to its costs and charges, West 237. [In S. the officer must not take any sum from the defendant or become the purchaser of the goods: *Paterson v. Philip*, Hume, 278.]

⁷ 7 Will. IV. & 1 Vict. c. 55, s. 3. For the corresponding fees in S., see Camp. Cit. & Dil. 582, and in I., R. S. C., 1885, O. 3, and *Wren v. Stokes*, 1897, 1 I. R. 451.

	£	s.	d.
Not exceeding seven miles	1	1	0
Exceeding seven miles	1	11	6
For conveying the defendant to gaol from the place of arrest, ¹ per mile	0	1	0
For an undertaking to give a bail bond	0	10	6

For a Bail Bond.

If the debt do not exceed £50	0	10	6
" " 100	1	1	0
" " 150	1	11	6
" " 300	2	2	0
" " 400	3	3	0
" " 500	4	4	0
If it shall exceed 500	5	5	0
For receiving money under the statute upon deposit for arrest, and paying the same into Court, if in London or Middlesex	0	6	8
If in any other county	0	10	0

For Filing the Bail Bond.

If the arrest be made in London or Middlesex	0	2	0
If in any other county	0	4	0

Assignment of Bail or other Bond.

If in London or Middlesex	0	5	0
If in any other county, including postage	0	7	6
For the return to any writ of <i>habeas corpus</i> , if one action	0	12	0
For each action after the first	0	2	6
For the bailiff to conduct prisoner to gaol, per diem	0	10	6
And travelling expenses, per mile	0	1	0
To the bailiffs for executing warrants on extent, <i>capias ultagatum</i> , <i>ne exeat</i> , attachment, <i>elegit</i> , possession, ² forfeited, recognisance, and other like matters, for each, if the distance from the sheriff's office or the bailiff's residence do not exceed five miles	1	1	0
If beyond that distance, per mile	0	0	6
Bond of indemnity besides stamps	1	10	0
Certificate of execution having issued for record	0	5	0

The following fees may now be charged for execution of writs of *fi. fa.*, under order of 31st of August, 1888:—

1. For expenses incurred by the sheriff's officer in making inquiries as to the goods of an execution debtor, and as to claims for rent and other claims on the goods, the actual expenses not exceeding under any circumstances £1 1s.

2. For seizure by the sheriff's officer. For each building or place separately rated at which a seizure is made, £1 1s.

3. For mileage, to include the mileage of the bailiff or the man in possession, per mile from the sheriff officer's residence, 1s.

The foregoing shall be paid by the execution creditor, and shall not be recoverable by him, although the execution proves abortive.

4. For man in possession, per day, 5s.

To provide his own board in every case.

5. For removal of goods or animals to a place of safe keeping, when necessary, the actual cost.

6. When goods or animals are removed, for warehousing and taking charge of the same (including feeding of animals), 2½ per cent. on the value of the goods or animals removed, or the sum endorsed on the writ of execution, whichever is

¹ See *Cooper v. Hill*, 6 C. B. N. S. 703; 28 L. J. C. P. 311.

² For the fees on this writ *I.*, see *Gibbon v. Buckley*, 24 Ir. C. L. 423.

the less. No fees for keeping possession of the goods or animals to be charged after the goods or animals have been removed.

7. For the inventory and valuation, cataloguing, lotting and preparing for sale, when no sale takes place by reason of the execution being withdrawn, satisfied, or stopped, $2\frac{1}{2}$ per cent. on the value of the goods.¹

8. For advertising and giving publicity to the sale by auction, the sum actually and necessarily paid.

9. For commission to the auctioneer on a sale by auction, $7\frac{1}{2}$ per cent. on the sum realised, not exceeding £100; £5 per cent. on the next £100, £4 per cent. on the next £200, and on any sum exceeding in all £500, £3 per cent. up to £1000, and $2\frac{1}{2}$ per cent. on any sum exceeding £1000.

10. For any sale by private contract, half the percentage allowed on a sale by auction.

11. Poundage and fee for delivery of writ as before.

The foregoing fees 2, 3, 4, 5, 6, 8, 9, 10 and 11 shall be levied in every case in which an execution is completed by sale, as fees payable to sheriffs were levied before the making of this order. In every case where an execution is withdrawn, satisfied, or stopped,² the fees under this order shall be paid by the person issuing the execution, or the person at whose instance the sale is stopped, as the case may be; and the amount of any costs and charges payable under this scale shall be taxed by a Master of the Supreme Court or District Registrar of the High Court (as the case may be), in case the sheriff and the party liable to pay such costs and charges differ as to the amount thereof.³

Proceeding against the sheriff for contempt does not preclude the plaintiff from bringing his action.⁴

Fees are payable by the creditor,⁵ and whether the process be regular or irregular does not matter,⁶ and in the absence of a special contract are payable to the sheriff only, and not to his officer.⁷

As to levy for fees and poundage it is doubtful whether this extends to *elegit*.⁸ It is probably confined to the charges.⁹

Where the sheriff claims more than he is entitled to, it is not necessarily extortion.¹⁰ Where he makes a seizure in one place and subsequently has another writ delivered to him, he is not entitled to charge a fee or mileage for a second seizure under the second writ unless there is in fact a fresh seizure in a different place.¹¹ But where he incurs expense at the instance and for the benefit of the creditor, he may deduct this from the amount of the levy.¹²

The sheriff is entitled to deduct poundage though the parties compromise before he sells,¹³ and when the execution has been set aside for irregularity after the levy and payment over of the proceeds have been made.¹⁴ But where he leaves goods taken in execution

¹ This does not apply to seizure of a ship: *Cohen v. De las Rivas*, 39 W. R. 539; 64 L. T. 661.

² See *Lee v. Dangar*, 1892, 1 Q. B. 231.

³ There is no appeal from this taxation: *Townend v. Sheriff of Yorkshire*, 24 Q. B. D. 621; 59 L. J. Q. B. 156; 62 L. T. 402; 38 W. R. 381.

⁴ *Pilkington v. Cooke*, 16 M. & W. 615.

⁵ *Wat.*, p. 112.

⁶ *Bullen v. Ansley*, 6 Esp. 111.

⁷ *Smith v. Broadbent*, 1892, 1 Q. B. 551; see *Farrelly v. Lynch*, 1897, 2 L. R. 455.

⁸ *Mahon v. Miles*, 30 W. R. 123.

⁹ *Porter v. Wootton*, 28 Sol. J. 548.

¹⁰ *Long v. Bray*, 10 W. R. 841. See *Stephens v. Rothwell*, 6 Moo. 338.

¹¹ *Re Wells*, 68 L. T. 231.

¹² *Rooney v. Farrell*, 5 C. L. Ir. 377.

¹³ *Alchin v. Wells*, 5 D. & E. 470.

¹⁴ *Rawstone v. Wilkinson*, 4 M. & S. 256. And see *Re Thomas*, W. N. '98, 154.

with a person who parts with the possession of them, he may not retake them merely to secure his own poundage where the execution was fraudulent.¹ When he has seized and is in possession of the goods or lands, he is entitled to poundage.² But the seizure must be actual and according to the writ.³ It is not necessary that he should proceed to a sale.⁴ But a tender before seizure is equivalent to payment, and no poundage is payable in such cases,⁵ nor where after seizure and before sale the writ is set aside,⁶ or there are concurrent writs and one is satisfied.⁷

When bankruptcy supervenes after seizure and before sale, no poundage is due as costs of the execution,⁸ nor are such costs expenses incurred while in possession for cutting, carrying, threshing and dressing corn.⁹ Costs are chargeable only up to the time of notice of the receiving order.¹⁰

The sheriff is not entitled to the costs of preparing a sale which has been stayed by notice of a prior act of bankruptcy.¹¹ But otherwise he is so entitled;¹² and in determining the amount for which execution is levied possession-money may be taken into account even after an injunction has been granted restraining the sheriff from sale.¹³

Where, by reason of a winding-up order, the sheriff was ordered to deliver up money and goods seized by him, the liquidator was directed to pay the amounts due to the sheriff for levy and charges on the writs and the costs of his application for such an order.¹⁴

He will be allowed his costs of keeping possession after applying to the Court, where it is for the benefit of the parties, though it be not in furtherance of his duty.¹⁵ But where he retained out of the proceeds of a sale, which were not sufficient to satisfy the plaintiff's claim, the expenses occasioned by keeping possession under an injunction, this was disallowed,¹⁶ and so was a claim for an unreasonable time.¹⁷ If he levies and remains in possession of goods, other than those of the execution debtor without any special order from the execution creditor, he cannot recover such possession-money.¹⁸ But if, after taking possession of the goods of a company which

¹ *Goode v. Langley*, 7 B. & C. 26.

² *Mortimore v. Cragg*, 3 C. P. D. 216; 47 L. J. C. P. 948; 38 L. T. 116; 26 W. R. 363.

³ *Bissicks v. Bath Colliery Company*, 3 Ex. D. 174; 47 L. J. Ex. 408; 38 L. T. 163; 26 W. R. 215.

⁴ *Re Sheriff of Surrey*, 38 L. T. 116.

⁵ *Colls v. Coates*, 11 A. & E. 826; 3 P. & D. 511.

⁶ *Miles v. Harris*, 12 C. B. N. S. 550; 31 L. J. C. P. 361.

⁷ *Lee v. Dangar*, *ubi sup.*

⁸ 52 & 53 Vict. c. 71, s. 11; *In re Ludmore*, 13 Q. B. D. 415; and see *In re Levy*, 63 L. T. 291; 38 W. R. 784.

⁹ *Ex parte Conder*, 20 Q. B. D. 40; 36 W. R. 526.

¹⁰ *In re Harrison*, 1893, 2 Q. B. 111; see *Kirk v. Purchase*, 32 C. L. Ir. 359.

¹¹ *Searle v. Blaise*, 14 C. B. N. S. 856.

¹² *In re Craycraft*, 8 C. D. 596. See *In re McCarthy*, 7 App. Ir. 473.

¹³ *Ex parte Lithgow*, 10 C. D. 169.

¹⁴ *In re Opera, Limited*, 1891, 2 Ch. 154; but see 3 Ch. 260.

¹⁵ *Underden v. Burgess*, 4 Dowl. 104. See *In re Hurley*, 41 W. R. 653.

¹⁶ *Buckle v. Bewes*, 5 D. & R. 495; 4 B. & C. 154.

¹⁷ *In re Finch*, 65 L. T. 466; 40 W. R. 175.

¹⁸ *Newman v. Merriman*, 26 L. T. 397; *Royle v. Busby*, 6 Q. B. D. 171.

afterwards goes into liquidation, he is restrained from selling, he is entitled to his poundage and costs.¹ And all incidental expenses may be charged where the sale takes place by order of the Court, even though it subsequently appear that the seizure was wrongful.² Where after seizure and before sale the execution creditor becomes disentitled to recover the debt, the sheriff cannot sell any portion of the goods in order to realise the amount of his possession-money, fees and expenses.³

Where a bailiff illegally compelled the plaintiff under a threat of distraining his goods to pay him a sum of money, it was held that the fact of the bailiff's having before the commencement of the action paid over the entire sum to the sheriff, who had paid it into the Exchequer, was no defence.⁴

The remedy by action in consequence of the smallness of the sums in dispute is not often resorted to.⁵

With regard to the Admiralty marshal, the fees payable are :—

On an arrest : 5s. a day, and if the officers be required to go a greater distance than five miles, reasonable expenses for travelling, board and maintenance.

On a sale : 40s. a day, and 10s. poundage for every £50 sold, and part thereof, together with necessary expenses⁶.

As to the high bailiff, it is laid down that if any bailiff or officer of the Court acting under colour or pretence of the process of the said Court, shall be charged with extortion or misconduct, or with not duly paying or accounting for any money levied by him, the judge may inquire summarily and make such order as he thinks just.⁷ This section does not apply to an error of judgment.⁸

The poundage is 6d. in the pound for appraisement, and 1s. in the pound on the proceeds of the sale.⁹

Where the landlord claims for rent due and the distraint therefor and the execution are separate proceedings, poundage is due on each.¹⁰

The following are the fees allowed :—¹¹

	s. d.
For keeping possession of goods till sale on any premises, per day (including expenses of removal, storage of goods, and all other expenses), not exceeding five days, 6d. in the pound on the value of the goods seized, to be fixed by appraisement, in case of dispute. ¹²	
For every default summons where not served by a solicitor	1 0

¹ *In re Perkins Beach Lead Mine*, W. N., 1877, 261.

² *Bland v. Delano*, 6 Dowl. 293; 1 W. W. & H. 75.

³ *Sneary v. Abdy*, 1 Ex. D. 299.

⁴ *Snowden v. Davis*, 1 Taunt. 359.

⁵ *Longdill v. Jones*, 1 Stark. 345; *Pilkington v. Cooke*, *ubi sup.*; and see *ante*, p. 173; and *post*, p. 213.

⁶ Supreme Court Funds, 1884, r. 100.

⁷ 51 & 52 Vict. c. 43, s. 50. [S., 1 Vict. c. 41, s. 32, small debts; 30 & 31 Vict. c. 96, s. 18, debts recovery. Otherwise, see A. S. 6, 3, 1853.] I., 27 & 28 Vict. c. 99, s. 18.

⁸ *Moore v. Brompton*, 69 L. T. 140; 41 W. R. 557.

⁹ Sect. 154. As to mode of ascertaining amount, see Treasury Order, Dec. 1886.

¹⁰ *Re Broster*, 76 L. T. 692.

¹¹ Treasury Order; and see County Court rules, 1889, 12 b. & d. As to bankruptcy and companies rules of 18-12-1890. As to L., 27 & 28 Vict. c. 99, s. 11.

¹² The judge may allow this where the execution is non-effective, by reason of not being upon goods of the execution debtor: *Thomas v. Peek*, 20 Q. B. D. 727.

For service of every judgment summons issued upon a judgment of a Court other than a County Court s. d.
5 0
 For executing every warrant, order of commitment, precept, or writ issued, from or on a judgment of a Court, other than a County Court, 1s. in the pound on the amount for which it issues, so that the total fee does not exceed 20s.; and for keeping possession, appraisement and sale, the same allowances as under a warrant of execution by a County Court.

	Where subject-matter of the suit	
	does not exceed £100.	does exceed £100.
	s. d.	s. d.
For service within home district of every summons, petition, notice or order:—		
If within two miles of court-house	4 6	6 6
If beyond, for every additional mile or part	0 6	0 6
For service in a foreign district—each defendant .	6 0	8 0
Where service ordered to be personal—additional .	4 0	5 0
For execution of each warrant in home district . .	7 6	10 0
Mileage double that on summons, <i>supra</i> .		
For execution of each warrant in foreign district .	10 0	15 0
Keeping possession for each day the man is actually in possession	6 0	7 6
Superintending sale, either by auction or private contract, making out account and paying money into Court, £2 per cent. on first £50 so paid, and £1 per cent. on all afterwards.		
In Admiralty Matters.		
For service of summons or subpoena, if served within three miles of registrar's office	5 0	5 0
Beyond that distance, whether for service or execution, all reasonable expenses.		
In execution of a warrant of arrest of a vessel or property	15 0	20 0
In keeping possession of a vessel or property, to include the cost of a vessel-keeper if required, per day	5 0	5 0
In sale of vessel or property including inventory, for every £50 or fraction thereof	10 0	10 0
For service of summons of commitment	4 0	8 0
Execution of warrant against body or goods . . .	20 0	30 0
Conveyance to gaol, per mile	1 0	1 0
In all cases where the amount is not disclosed, it shall be taken not to exceed £100.		

Actions by or against officers may at the request of the party other than the officer be transferred to an adjoining Court for trial.¹

As to overseers, it is enacted that distresses for small rents² under £20 are not to be charged for other than as follows:—

¹ 51 & 52 Vict. c. 43, ss. 42, 43. ² 57 Geo. III. c. 93, s. 1. Extended.
 See *Partridge v. Elkington*, L. R. 6 Q. to rates and taxes by 7 & 8 Geo. IV.
 B. 82; 10 L. J. Q. B. 49; 19 W. R. 385. c. 17.

	s.	d.
Levying distresses	3	0
Man in possession, per day ¹	2	6
Appraisement, whether by one broker or more, 6d. in the pound on value of goods; stamp, the lawful amount thereof, all expenses of advertisements (if any)	10	0
Catalogues, sale and commission, and delivery of goods, 1s. in the pound on the net produce of the sale.		

Aggrieved parties may apply to a justice, who may adjudge treble the amount unlawfully taken, and costs.

But, besides these special proceedings, an action lies generally against officers to recover moneys improperly paid to them. The plaintiff, by bringing his action for money had and received can only recover the money so paid. But if trespass had been brought, the defendant must have pleaded specially, and the plaintiff might have recovered damages far beyond the money actually so paid. So where goods are taken in execution which are not the property of the persons against whom execution is taken out, the owner may waive the trespass and bring his action for the amount for which the goods were sold.² But in interpleader the action will not lie unless there be an order to pay over on declaring the ownership.³

Where an officer obtains money from a person by means of oppression, imposition or deceit, an action will lie for its recovery;⁴ as, for instance, where a sheriff obtains money under the pressure of an illegal arrest;⁵ or under a threat to sell goods under a *fi. fa.* which he has no right to sell;⁶ or receives money in excess of that due;⁷ or where a toll-collector exacts an illegal or unauthorised toll;⁸ or where an officer levies money by seizing and selling goods upon a magistrate's conviction, which is afterwards quashed;⁹ or a revenue officer unlawfully seizes goods as forfeited and unlawfully detains them, and takes money which he has no right to take as the condition of their release.¹⁰

But an action does not apparently lie against a revenue officer to recover an overpayment,¹¹ nor to recover duties received by him after the Act which imposed them is repealed, if he has paid them over to his superior.¹² Nor does it lie against a highway surveyor for

¹ The possession must be actual in the absence of agreement: *Lumsden v. Burnett*, 1898, 2 Q. B. 177.

² *Per* Ld. Mansfield; *Feltham v. Terry*, cited 1 T. R. 387; 1 Cowp. 419.

³ *Discount Co. v. Lambarde*, 1893, 2 Q. B. 329; 69 L. T. 223.

⁴ *Neate v. Hardinge*, 6 Ex. 349; 20 L. J. Ex. 250.

⁵ *Payne v. Chapman*, 4 Ad. & E. 364; *Mesnil v. Dakin*, L. R. 3 Q. B. 18; 37 L. J. Q. B. 42.

⁶ *Valpy v. Manley*, 1 C. B. 602.

⁷ *Dew v. Parsons*, 2 B. & A. 562; 1

Chit. 295; I., 27 & 28 Vict. c. 99, s. 65; *Murphy v. Sandes*, 10 C. L. Ir. 309; *Kelly v. Browne*, 12 App. Ir. 354.

⁸ *Lewis v. Hammond*, 2 B. & A. 206. *Parsons v. Blandy*, Wight, 22; see *Carr v. Fowle*, 1893, 1 Q. B. 251.

⁹ *Feltham v. Terry*, *ubi sup.*

¹⁰ *Allen v. Backhouse*, 3 M. & W. 645; *Irving v. Wilson*, 4 T. R. 485.

¹¹ *Whitbread v. Brooksbank*, Cowp. 89; *Lofft*, 529; but see *Geraldes v. Donison*, Holt, 346.

¹² *Greenway v. Hurd*, 4 T. R. 553.

failing to restore an overplus of distress to the owner, if such restoration be not properly demanded.¹

If assets in the hands of an officer have been increased by an honest mistake of law, the Court will compel him to recognise the rules of honesty, and to act accordingly.²

Under certain statutes an action lies for a penalty for taking money under colour of office.³ No damages other than the penalty are recoverable in such an action.⁴

Where a sheriff's officer was sued for a penalty for extortion⁵ which was not proved, but the officer's claim was held outrageous, the action was dismissed, but without costs.⁶

*False Imprisonment.*⁷

Every confinement of the person is an imprisonment, whether it be in a common prison or in a private house, or even by forcibly detaining one in the public streets. Unlawful or false imprisonment consists in such confinement or detention without sufficient authority.⁸

False imprisonment commences from the time of arrest, and lasts until the plaintiff is before the magistrates. After that it becomes malicious prosecution.⁹

Actual contact is not necessary to constitute an imprisonment. Any restraint put upon the freedom of another by shew of authority or force, is sufficient to constitute an imprisonment,¹⁰ so that if a person is restrained from leaving a room or going out of a house without the presence of a constable, this infringement of his personal liberty will constitute an imprisonment.¹¹ If you put your hand on a man, or tell him he must go with you, and he goes, supposing you have the right and the power to compel him, that is an arrest.¹²

¹ *Charinton v. Johnson*, 14 L. J. Ex. 299.

² *In re Opera, Limited* [1891], 2 Ch. 154; but see 3 Ch. 260.

³ As to this, see *Edwards v. Salmon*, 23 Q. B. D. 531; 58 L. J. Q. B. 571; 38 W. R. 166.

⁴ *Frederick v. Lookup*, 4 Burr. 2018; *Cuming v. Sibley*, ib. 2489.

⁵ 50 & 51 Vict. c. 55, s. 29.

⁶ *Woolford's Trustee v. Levy*, 1892, 1 Q. B. 772; see *Lee v. Dangar*, *ubi sup.*

⁷ The remedy of a person falsely imprisoned is in the first instance, *i.e.*, while under arrest to obtain a writ of *habeas corpus*, except in treason or felony: 91 Car. II. c. 2, s. 2.

⁸ 3 Black. 127. [S., 1701, c. 6. Proceedings are rarely brought under the Act, but take the form of an action for damages: *Campbell v. Ramsay*, Elch. h. t. 1 M. 17067; *Miller v. Mills*, 9 S. 625.] As to arrest in another country,

see 11 & 12 Vict. c. 42, s. 15; 14 & 15 Vict. c. 93, s. 30. [*Callendar v. Milligan*, 11 D. 1174; *Graham v. Stevenson*, Hume, 250.]

⁹ *Austin v. Dowling*, 5 L. R. C. P. 534; 39 L. J. C. P. 260; 22 L. T. 721; 18 W. R. 1003.

¹⁰ The practice of "shadowing" by the police would appear to fall within these words. And even if the party be suspected of felony about to be committed on which arrest might take place, it seems doubtful whether this practice could be justified. Cases have occurred in which false charges have been made as a cover for this process.

¹¹ *Warner v. Riddiford*, 4 C. B. N. S. 206. The practice of watching premises would appear to come within these words.

¹² *Per Tindal, C.J., Wood v. Lane*, 6 C. & P. 774. [See *M' Hattie v. Wyness*, 19 R. J. C. 95.]

A person unlawfully imprisoned by a sheriff or any of his officers shall have an action against such sheriff in like manner as against any other person that should imprison him without warrant.¹

[In Scotland damages were given for detaining a party in a public-house on an unsigned warrant granted *in fuga*.]²

Where the bailiff having a writ of *fi. fa.* in his hands arrested the defendant, instead of levying on his goods, the sheriff was held liable.³ So also was he where he arrested a person who represented himself to be the person named in the writ, for detaining him after he had notice that he was not the real party.⁴ And he is also liable where he arrests after the return-day of the writ.⁵ If a bailiff who has a process against any one says to him, "You are my prisoner; I have a writ against you"; on which the person addressed submits, turns back, or goes with him, though the bailiff never touched him;⁶ or if a constable command a person to go with him, and the order is obeyed, and they walk together in the direction pointed out by the constable, in each case there is a constructive imprisonment.⁷ And in an action against a constable by A, he cannot defend himself under a magistrate's warrant against B, although A was charged with felony before the magistrate, and was the person against whom the warrant was intended to issue;⁸ nor if he arrest a person on a charge from another person which is unreasonable.⁹ But the forcibly preventing a party from proceeding in a particular direction, *e.g.*, along a public footway, is not an imprisonment.¹⁰ And a constable on duty at a police station is justified in detaining a person brought there in charge and delivered to him by a constable, although he may have been illegally arrested.¹¹

The keeper of a prison who receives and detains one apprehended and charged in custody under a warrant runs the risk of the warrant having been executed against the proper person, and if by mistake it be executed against authority, he is liable.¹² So also is he if where a duty to discharge is cast upon him, he detain a person longer.¹³ But

¹ 50 & 51 Vict. c. 55, s. 15. I., common law.

² *Anderson*, 18 F. C. 51. The Procurator-Fiscal may be liable to this action but not the Lord-Advocate.

³ *Smart v. Hutton*, 8 A. & E. 568; 2 N. & M. 426.

⁴ *Dunston v. Paterson*, 2 C. B. N. S. 495; 26 L. J. C. P. 267.

⁵ *Parrott v. Mumford*, 2 Esp. 585. See *Dale*, 6 Q. B. D. 376.

⁶ *Grainger v. Hill*, 4 Bing. N. C. 212; 5 Sc. 580.

⁷ *Bird v. Jones*, 7 Q. B. 742; 15 L. J. Q. B. 82; [*Manuel v. Fraser*, 1 Mur. 395; *Hollands v. Richardson*, 6 D. 9; *Malcolm v. Duncan*, 24 R. 747.]

⁸ *Haye v. Bush*, 2 Sc. N. R. 86; 1 M. & G. 775; 1 Drink. 15; and see *Creagh v. Gamble*, 24 L. R. Ir. 458.

⁹ *Hogg v. Ward*, 3 H. & N. 417. [*Henderson*, 11 F. C. 47.]

¹⁰ *Bird v. Jones*, *ubi supra*.

¹¹ *Bowditch v. Fossbury*, 19 L. J. Ex. 339. The general duty of constables on arrest is within a reasonable time to take the party before a justice and of other officers to take to the nearest station-house. If the detention be extended beyond such time it would give ground for this action.

¹² *Aaron v. Alexander*, 3 Camp. 34.

¹³ *Moone v. Rose*, L. R. 4 Q. B. 486; 38 L. J. Q. B. 236; [*Ross v. McBean*, 8 D. 250]. Persons charged with the apprehension or custody of prisoners are responsible for their treatment while in their care.

where the cause does not appear on the face of the warrant or order and he complies with its terms, he is not liable.¹ Every unlawful detainer of a prisoner after he has gained a right to be discharged is a fresh imprisonment.² All persons aiding and assisting in the unlawful confinement of another are responsible in damages for the trespass, although they had nothing to do with the original arrest, and had no knowledge that the arrest and imprisonment were unlawful at the time they had a hand in it.³ But this does not apply to a constable arresting on a hue and cry,⁴ or on a reasonable charge made by another person.⁵ If a wrong person be arrested by mistake, all persons causing the arrest are liable for the injury, unless the party complaining has brought the injury on himself by his own misstatements and misrepresentations.⁶

A justification of an imprisonment on the ground that the plaintiff had committed felony, and an abandonment of the plea at the trial, or a failure to prove it, are evidence of malice, and a great aggravation of the original wrong; but a justification on the ground that a felony had been committed, and that the defendant had reasonable and probable cause to suspect the plaintiff guilty of it is rather in the nature of an apology for the defendant's conduct.⁷ The onus of justification is on the defendant, and therefore in trespass for arrest on a warrant the plaintiff need not produce the warrant.⁸ It lies on the defendant to plead and prove affirmatively the existence of reasonable cause as his justification.⁹ A plea which professes to justify several assaults and false imprisonments laid in separate counts, must shew distinct occasions upon which the defendant was justified in committing each particular trespass.¹⁰

The question of reasonable and probable cause is for the judge.¹¹

Where, under statutes, constables are authorised to arrest offenders in their view or found committing offences, a plea justifying an arrest must allege that the offence was committed within view of the constable, or the offender was found committing such offence, as the case may be.¹² And where a statute authorised a constable to remove an offender, a plea stating that he was so removed and

¹ *Greaves v. Keene*, 4 Ex. D. 73; 1038; see *Miller v. Alexander*, 9 D. 7; [Neil v. Miller, Elch. Wrong. Imp.].

² *Withers v. Healey*, Cro. Jac. 379; 2 Inst. 52.

³ *Griffin v. Coleman*, 4 H. & N. 265; 28 L. J. Ex. 137; [Strang. 11 D. 378].

⁴ *Ante*, p. 51.

⁵ *Ante*, p. 112.

⁶ *Davies v. Jenkins*, 11 M. & W. 754; [Hamilton v. Anderson, 5 M. 312; Walker v. Hunter, 16 D. 226].

⁷ *Warwick v. Foulkes*, 12 M. & W. 509; 13 L. J. Ex. 109. [In S. in case of wrongful detention no averment of malice as required by 11 Geo. IV. c. 37, s. 13 is necessary: *Tait v. Payne*, 18 D.

⁸ *Holroyd v. Doncaster*, 11 Moo. 441.

⁹ *Hicks v. Faulkner*, 46 L. T. 127; 8 Q. B. D. 167; 51 L. J. Q. B. 268; 30 W. R. 545; *Mure v. Kaye*, 4 Taunt. 34; and see *M'Cloughan v. Clayton*, Holt, N. P. C. 478.

¹⁰ *M'Curday v. Driscoll*, 1 C. & M. 618; 3 Tyr. 571; *Dawson v. Clark*, 1 Bla. 563.

¹¹ *Howard v. Clarke*, 20 Q. B. D. 558; [Young v. Glasgow, 18 R. 825].

¹² *Simmons v. Milligen*, 2 C. B. 524; 15 L. J. C. P. 102.

detained in custody, was held no justification, such detention having been unlawful.¹

Proof must be given of circumstances from which the judge and jury may decide whether there was or was not a restraint or a detention of the person, and it is not enough for witnesses to swear that they considered the plaintiff was in custody, nor to shew that the defendant at a police office stood before the plaintiff and said, "You cannot go away till the magistrate comes," if it appears that he relinquished that attitude, and went to another part of the office before the plaintiff had made any attempt to depart.² Where an imprisonment can only be justified on an original warrant, and the defendant had a copy only, the plaintiff may prove this fact.³

If A imprisons B, and in continuance of the imprisonment delivers him into the charge of C, who keeps him in custody, the acts and declarations of C are evidence against A.⁴ If a witness who admits that he stole similar property at the same time is called to sustain the defence, his testimony ought to receive some confirmation.⁵ The defendant cannot cross-examine as to the bad character of the plaintiff, nor as to previous charges against him.⁶

A conviction of a third party for the same offence as that for which plaintiff was arrested cannot be put in, unless the defendant knew of it at the time of the arrest.⁷ And a conviction which when put in proves to be informal, has no weight.⁸

Reasonable and probable cause of suspicion is good evidence in mitigation of damages.⁹

Every expense that the plaintiff necessarily incurs in order to restore himself to a complete state of freedom is recoverable as damages.¹⁰ But he cannot recover in respect of having been detained whereby he missed an opportunity of being taken into employment,¹¹ nor on account of a remand by the justice,¹² nor for illness caused by refusal of defendant to send for medical assistance, unless the jury find that the detention was unreasonable.¹³ The Court never interferes with the discretion of the jury, unless the damages are grossly excessive or founded on a mistaken or improper view.¹⁴ Where some working men were unlawfully imprisoned for six hours, being in the meantime well fed and cared for, and the jury awarded

¹ *Williams v. Glenister*, 4 D. & R. 989; 12 L. J. C. P. 38; *Chinn v. Morris*, 217; 2 B. & C. 699.

² *Cant v. Parsons*, 6 C. & P. 504.

³ *Howard v. Hudson*, 2 E. & B. 1.

⁴ *Powell v. Hodgetts*, 2 C. & P. 432.

⁵ *Richards v. Turner*, Car. & M. 414.

⁶ *Downing v. Butcher*, 2 M. & Rob. 374; [*Mackintosh v. Smith*, 3 Macph. H. L. 6].

⁷ *Thomas v. Russell*, 9 Ex. 764; 2 C. L. R. 542; 23 L. J. Ex. 233.

⁸ *Justice v. Gosling*, 12 C. B. 39; 21 L. J. C. P. 94.

⁹ *Perkins v. Vaughan*, 4 M. & G.

989; 12 L. J. C. P. 38; *Chinn v. Morris*, 2 C. & P. 364.

¹⁰ *Fozall v. Barnett*, 2 El. & Bl. 298;

23 L. J. Q. B. 7; *Att.-Gen. v. Pearson*,

10 Jur. 651. [*Donald v. Robertson*, 2 S.

65; *Gibson v. Anderson*, 9 D. 1.]

¹¹ *Hoey v. Felton*, 11 C. B. N. S. 142;

31 L. J. C. P. 105; 5 L. T. 354; 10 W.

R. 78.

¹² *Lock v. Ashton*, 12 Q. B. 871; see

Morgan v. Hughes, 2 T. R. 231.

¹³ *O'Brien v. Brabner*, 49 J. P. 227;

78 L. T. (N.) 409.

¹⁴ *Per Tindal, C.J.*; *Edgell v. Fran-*

cis, 1 M. & G. 222; 1 Sc. N. R. 121.

£300 to each, the Court refused to set aside the verdict.¹ And where a person was arrested on a bad warrant for arrears of poor-rate, the damages were held to be the amount he had paid under protest on arrest.²

The plaintiff may in his notice of trial, and the defendant may within four days afterwards, or such extended time as may be allowed, claim to have the action tried by a jury.³

The action must be commenced within four years next after the cause thereof.⁴

Malicious Prosecution.

A malicious prosecution is a prosecution whereby the plaintiff is injured by being arrested or put to expense, instituted by one person against another without reasonable and probable cause, and which has failed. It commences at the time the plaintiff is before the magistrates. Prior to this, it is false imprisonment where there has been an arrest.⁵

Prosecuting a person with any other motive than bringing a guilty party to justice is a malicious prosecution, as where it is instituted with the view of terrifying parties from the commission of some prevalent offence.⁶

If there be no reasonable or probable cause for a charge, the action lies,⁷ and so also does it for maliciously obtaining or executing a warrant.⁸

Counsel's opinion is of no avail to a man who has instituted such a prosecution.⁹

On the principle that *nemo bis vexari debet pro eadem causa* it has been held that there can be no appeal from an acquittal.¹⁰ Any such

¹ *Huckle v. Money*, 2 Wils. 205.

² *Clark v. Woods*, 17 L. J. M. C. 189. As to damages in joint actions, see *Haythorn v. Lawson*, 3 C. & P. 196; *Barrett v. Collins*, 10 Moo. 446. [In S. the claim for damages is not barred by resistance to the officer: *O'Neal v. Dumfries*, M. 11201; nor by conviction for forcement: *Beattie v. M'Lellan*, 8 D. 930.]

³ Order xxxvi., r. 2. I., r. 4. [6 Geo. IV. c. 120, s. 28.] 51 & 52 Vict. c. 43, s. 101; I., 14 & 15 Vict. c. 57, s. 100.

⁴ 21 Jac. I. c. 16, s. 3. [In S. three years, 1701, c. 6; *M'Christie v. Kea*, 9 S. 312. As to costs, 31 & 32 Vict. c. 100, s. 40.]

⁵ *Austin v. Dowling*, 5 L. R. C. P. 234; 39 L. J. C. P. 260; 22 L. T. 721; 18 W. R. 1003.

⁶ *Stevens v. Midland Counties Railway*, 10 Ex. 352; 23 L. J. Ex. 328.

Cases are not unknown of prosecution instituted by an officer in order to divert suspicion from himself. Cf. *R. v. Hughes*, 4 Q. B. D. 614.

⁷ *Clark v. Postan*, 6 C. & P. 423; *Fitzjohn v. Mackinder*, 9 C. B. N. S. 505; 30 L. J. C. P. 257; 4 L. T. 149; 9 W. R. 477.

⁸ *Booth v. Cooper*, 1 T. R. 535; 3 Esp. 185; 4 Doug. 389; *Elsie v. Smith*, 1 D. & R. 97; 2 Chit. 304; and see *Hope v. Evered*, 17 Q. B. D. 338; 55 L. J. M. C. 146; 55 L. T. 320; 34 W. R. 742; *Utting v. Burney*, 5 Ti. Rep. 39; and *Creagh v. Gamble*, 24 L. R. Ir. 458. [*Evans v. M'Loughlan*, 4 Macq. H. L. 89; *Graham v. M'Lachlan*, 15 D. 889; *Munro v. Taylor*, 7 D. 500.]

⁹ *Hewlett v. Crutchley*, 5 Taunt. 283.

¹⁰ See *The Queen v. London*, JJ., 6 Ti. Rep. 389; *Cox v. Hakes*, *ib.* 465; 39 W. R. 145.

proceedings, therefore, would appear to be in the nature of a malicious prosecution, unless by special case.¹

The necessary ingredients in this action are:—

1. Malice, which may be either express or implied.

To sustain the averment of malice the charge must be wilfully false.² But if in the opinion of the judge there was no reasonable or probable cause, the jury may from that fact alone infer malice,³ unless the prosecutor honestly believed in the charge.⁴

Scandalous charges and accusations made by the defendant against the plaintiff in connection with the prosecution are evidence of malice. And so are any statements or declarations made by the defendant tending to shew that he was actuated by spite and ill-will in instituting the prosecution.⁵

It is no answer to shew that the charge preferred against the plaintiff was not sustainable in point of law.⁶

The question of malice is never in terms left to the jury.⁷

2. Want of reasonable and probable cause.

Reasonable and probable cause has been defined by a learned judge as an honest belief in the guilt of the accused based upon a full conviction founded upon reasonable grounds of the existence of a state of circumstances, which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of the accuser, to the conclusion that the prisoner charged was probably guilty of the crime imputed.⁸ Information received from persons apparently respectable and believed to be credible is sufficient.⁹ The disbelief of the party making the charge is some want of probable cause, notwithstanding other evidence may have shewn that there was *prima facie* probable cause.¹⁰ The evidence need not be sufficient to convict, nor need it be confirmed at the time of the plaintiff's arrest.¹¹ Similarity of handwriting has been held not *per se* reasonable and probable cause for preferring a charge.¹²

The question of reasonable and probable cause is for the judge.¹³

3. Prosecution determined in plaintiff's favour.

The plaintiff, to recover in this action must have had judgment in his favour in the prosecution,¹⁴ unless the proceedings were such that he had no opportunity of preventing an unfavourable termina-

¹ 42 & 43 Vict. c. 49, s. 33.

² *Cohen v. Morgan*, 6 D. & R. 8.

³ *Busst v. Gibbons*, 30 L. J. Ex. 75.

[In S. the procurator-fiscal may be liable to this action but not the Ld. Advocate.]

⁴ *Brown v. Hawkes*, 61 L. J. Q. B. 151; 65 L. T. 108.

⁵ *Mitchell v. Williams*, 11 M. & W.

217; 12 L. J. Ex. 193.

⁶ *Wicks v. Fentham*, 4 T. R. 248.

⁷ *Payne v. Revans*, 9 W. R. 693.

⁸ *Hicks v. Faulkner*, 8 Q. B. D. 167; 51 L. J. Q. B. 268; 30 W. R. 545; 46 L. T. 127.

⁹ *Chatfield v. Comeford*, 4 F. & F. 1008.

¹⁰ *Broad v. Ham*, 5 Bing. N. C. 722; 8 Sc. 40.

¹¹ *Dawson v. Vansandau*, 11 W. R. 516.

¹² *Clements v. Ohrlly*, 2 C. & R. 686.

¹³ *Howard v. Clarke*, 20 Q. B. D. 558.

¹⁴ *Taylor v. Ford*, 29 L. T. 392; 22 W. R. 47. See *Castrique v. Behrens*, 3 El. & El. 709; 30 L. J. Q. B. 163; and *Barber v. Lewis*, 7 C. B. N. S. 183; 29 L. J. C. P. 161.

tion.¹ An acquittal through defect in the prosecution is sufficient,² but if it be the result of deliberation, and the evidence be such as to cause the jury to pause, it is doubtful whether it is so.³ The prosecution being non-proved is not of itself evidence of malice.⁴

4. Allegation and proof of damage having been sustained by the plaintiff is essential.⁵ The plaintiff must in this action allege and prove affirmatively the non-existence of reasonable and probable cause.⁶ Every allegation proper to support the action, namely, that the defendant falsely, maliciously, and without any reasonable or probable cause, caused the plaintiff to be indicted, and the trial and acquittal must be pleaded.⁷ It is not necessary to state that there was an information, if the defendants procured a warrant to issue; but if the claim state that the defendant made information on oath, on which the magistrate granted the warrant, the information must be proved and a recital of it in the warrant is not sufficient.⁸ But the claim is sustained, although it appear that the defendant preferred the indictment unwillingly and solely because he was bound over to do so, if it appear that he was himself the cause of his being bound over by originally making a malicious charge.⁹ Where the bill has not been found, an action cannot be supported without evidence of express malice as well as the want of probable cause.¹⁰

The plaintiff must give evidence of malice express or implied. It cannot be implied from mere proof of the prosecutor not appearing when called.¹¹ Evidence of misconduct of the prosecutor towards the plaintiff is admissible.¹²

In an action for maliciously procuring plaintiff to be arrested on a charge of larceny, defendant cannot give evidence to shew that the plaintiff's character was suspicious, and that his house had been searched on former occasions.¹³ If the defendant gives evidence of probable cause, a witness may, however, be asked whether the plaintiff was not a man of notoriously bad character.¹⁴ But where the plaintiff does not expressly claim damages in respect of injury to reputation, general evidence as to his character is inadmissible.¹⁵

There are three sorts of damages in these cases, either of which is sufficient to sustain an action, namely, damage to a man's reputa-

¹ *Steward v. Gromett*, 7 C. B. 191; 29 L. J. C. P. 170; [*Barnett v. White*, 11 D. 666].

² *Wicks v. Fentham*, 4 T. R. 247. See *Leggatt v. Tollervey*, 14 East 302.

³ *Smith v. Macdonald*, 3 Esp. 7. But see *Willans v. Taylor*, 3 Moo. & P. 350.

⁴ *Sinclair v. Eldred*, 4 Taunt. 7.
⁵ *Freeman v. Arkell*, 3 D. & R. 669; 1 C. & P. 137; *Cotterell v. Jones*, 11 C. B. 713; *Johnson v. Emerson*, L. R. 6 Ex. 329; *Wren v. Weild*, L. R. 4 Q. B. 730.

⁶ *Hicks v. Faulkner*, *ubi sup.* [*Strachan v. Munro*, 7 D. 399.]

⁷ *Carman v. Truman*, 1 Bro. P. C.

101; *De Medina v. Grove*, 10 Q. B. 152.

⁸ *Gregory v. Derby*, 8 C. & P. 749.

⁹ *Dubois v. Keates*, 3 P. & D. 367;

11 A. & E. 329.

¹⁰ *Byrne v. Moon*, 1 Marsh 12; and see *Cotton v. Brown*, 4 N. & M. 831; 3 A. & E. 312.

¹¹ *Purcell v. Macnamara*, 9 East 361; 1 Camp. 199; *Abrath v. North Eastern Railway Company*, 11 Q. B. D. 440.

¹² *Caddy v. Barlow*, 1 M. & Ry. 275,

¹³ *Newsam v. Carr*, 2 Stark. 69.

¹⁴ *Rodriguez v. Tadmire*, 2 Esp. 721.

¹⁵ *Downing v. Butcher*, 2 M. & Rob. 374.

tion, person or property.¹ And every expense which the plaintiff has necessarily incurred in order to defend himself from the false and malicious charge is recoverable.²

The right to trial by jury is the same as that in actions for false imprisonment.³

The action must be commenced within four years after the cause of such action.⁴

Public Nuisance.

Every injury to public rights which affects all persons alike, such as an obstruction in a public thoroughfare merely impeding the right of passage and rendering the way less convenient, is remediable only by indictment.⁵ But for any special injury which affects an individual beyond his fellows,⁶ such as being delayed in making a journey and compelled to take a circuitous route,⁷ or driving against the obstruction during a dark night, compensation in damages may be obtained.⁸ The prevention of customers from going to a colliery by obstructing the highway *per quod*, the benefit of the colliery was lost, and the coals dug up depreciated in value, is such a special and particular damage as to enable the owner of the colliery to maintain an action for the private injury resulting from the nuisance.⁹

The limitation for actions of the first kind is four, and for those of the second kind six years.¹⁰

Slander.

Slander is a false and malicious defamation of character,¹¹ expressed verbally, tending to injure the reputation of another and expose him to public ridicule, hatred or contempt.¹²

The action is not maintainable without proof of actual damage caused to the plaintiff, *except* where the words impute the commission of a crime, unfitness for society, or misconduct in business.¹³

¹ *Per* Holt, C.J., *Sairle v. Roberts*, B. 287; 30 L. J. C. P. 273. [*Cf. Brown v. Murray*, 1 R. 776.]

² *Fozall v. Barnett*, 2 El. & Bl. 298; 23 L. J. Q. B. 7.

³ See *ante*, p. 192.

⁴ 21 Jac. I. c. 16, s. 3. [As to costs S., 31 & 32 Vict. c. 100, s. 40.]

⁵ *Hart v. Bassett*, T. Jon. 156.

⁶ *Barber v. Penley*, 1893, 2 Ch. 449. [Special damage unnecessary in S.]

⁷ *Winterbottom v. Derby*, L. R. 2 Ex. 316.

⁸ *Iveson v. Moore*, 1 Ld. Ray. 486; 1 Salk. 15. See *Harris v. Mobbs*, 2 Ex. D. 268; *Wilkins v. Day*, 12 Q. B. D. 110; 49 L. T. 399. [See *Ogston v. Aberdeen Tram. Co.*, 75 L. T. 633.]

⁹ *Iveson v. Moore*, *ubi sup.* As to damages, see *Bell v. Midland Ry.*, 10 C.

¹⁰ 21 Jac. I. c. 16, s. 3.

¹¹ By s. 56 of the County Courts Act, this action does not lie in that Court. But by s. 64 it may be there taken by agreement. See *Stokes v. Stokes*, 19 Q. B. D. 419. No similar enactment in S. or I.

¹² Broom, Com. Law, 9th ed., 731. [In S. the definition is the same but publication is unnecessary.]

¹³ *Rowcliffe v. Edmunds*, 7 M. & W. 12; *Foulger v. Newcomb*, L. R. 2 Ex. 327. See 54 & 55 Vict. c. 51, s. 1, slander of women. [In S. damages may be given for wounded feelings: *Bryson v. Inglis*, 6 D. 363. But actions for mere abuse generally fail: *Craig v. Hunter*, 15 F. C. 371; *Mackintosh v. Squair*, 40 J. 561.]

And to call a man a felon after he has been convicted but received a pardon or undergone his sentence is actionable,¹ without proof of such damage. Words merely conveying suspicion will not sustain the action,² but it is otherwise if they impute a crime, though it is described in vulgar language and not in technical terms,³ and the offence imputed need not be an indictable offence.⁴

However honestly the party who publishes a libel believes it to be true, if it is untrue in fact, the law implies malice, unless the occasion justifies the act, and this is a question of law.⁵ A publication may be a libel on a private person which would not be so on a person in a public capacity, but any imputation of unjust or corrupt motives is equally libellous in either case.⁶

Allegorical terms of a defamatory character or of evil import, such as imputing to a person the qualities of a "frozen snake" in the fable, are libellous *per se* without innuendoes to explain their meaning.⁷

Repetition of injurious rumour is actionable unless the occasion be privileged, and it is no justification that the rumour existed.⁸ Where slanderous words are not actionable *per se*, no action will lie against the original utterer for damages resulting from a repetition unauthorised by him,⁹ nor where the special damage was due not to the slander as uttered by the defendant, but to its repetition.¹⁰ It is no answer to shew that the slander was heard from another, naming the person and the time without shewing that the defendant believed it to be true, and spoke the words on a justifiable occasion.¹¹ If the defendant at the time of speaking the words give the name of the person from whom he heard it, this is no justification; but if he did this, and at the trial proves this fact, it will go in mitigation of damages.¹²

Privileged communications comprehend all statements made *bonâ fide* in the performance of a duty, or with a fair and reasonable purpose of protecting the interests of the person making them. In such cases the onus of proving malice lies on the plaintiff.¹³ Charges and communications which would otherwise be slanderous are protected

¹ *Leyman v. Latimer*, L. R. 3 Ex. D. 352; 47 L. J. Ex. 470. *Rose v. Robertson*, Hume 614.]
² *Simmons v. Mitchell*, 6 App. Cas. 156. *Parkins v. Scott*, 1 H. & C. 153;
³ *Colman v. Goodwin*, 3 Doug. 90. 31 L. J. Ex. 331.
⁴ *Webb v. Beavan*, 1 Q. B. D. 609; 263; *Ecklin v. Little*, 6 Ti. Rep. 366.
⁵ 52 L. J. Q. B. 544; 49 L. T. 201. [*Mackellar*, 21 D. 222.]
⁶ *Darby v. Ouseley*, 1 H. & N. 1. ¹⁰ *Speight v. Gosnay*, 55 J. P. 501.
⁷ [*Robertson v. Allardye*, 5 M. 326.] ¹¹ *McPherson v. Daniel*, 10 B. & C. 263;
⁸ *Parmiter v. Coupland*, 6 M. & W. 583; *Harrison v. Bush*, 5 El. & Bl. 344; 25 L. J. Q. B. 25; and see *Stuart v. Bell*, 64 L. T. 693; 39 W. R. 618 [1891]; 2 Q. B. 341; *Hebditch v. McIlwaine*, 1894, 2 Q. B. 54. [*McMurchy v. Campbell*, 14 R. 725; *Lightbody*, 9 R. 934.]
⁹ *Watkin v. Hall*, L. R. 2 Q. B. 396. [*McCulloch v. Litt*, 13 D. 960;

if made *bonâ fide* in the prosecution of an inquiry into a suspected crime. It is for the jury to say whether the circumstances warranted the charge made by the defendant, whether it was made *bonâ fide* or before more persons than was necessary, or in language stronger than the occasion justified.¹ A criminatory communication made by a public officer is privileged if it is confined to a statement of facts which it is his duty to investigate, and contains nothing but what he believes to be true. But if he imputes improper motives to others, and accuses them of attempts to extort money by misrepresentation, if irrelevant calumny is introduced, or if it contains strictures upon the motives and conduct of others which the facts stated do not warrant, he will exceed his privilege, and subject himself to an action for damages.² Words spoken by a medical officer to the steward of a public school to the effect that the plaintiff, a butcher, who supplied meat to the school, sold bad meat, were held privileged in the absence of malice.³ A witness in a court of justice is absolutely privileged as to anything he may say as a witness, having reference to the inquiry on which he is called, and a statement as to another matter made to justify him in consequence of a question going to his credit is within the rule.⁴

The Court has jurisdiction to restrain a person making slanderous statements, but such jurisdiction will be exercised with great care.⁵

Where a plea of justification contains several charges, and the plaintiff replies generally denying the whole, he is entitled to a verdict, unless the defendant proves to the satisfaction of the jury the truth of all the material allegations; and if the defendant fails to do this, it is no ground for a new trial that with respect to some of the charges on which the jury gave a verdict against the defendant, the finding was against the weight of evidence.⁶ A defence stating the matter complained of "is true in substance and effect" means true in every particular, and if the defendant does not prove such statement to be true, the defence is not proved, although he proves facts of the same description.⁷ Where the claim alleged that one, at the request and by the direction of the defendant, uttered the slander, the plaintiff was ordered to give particulars of the names of the persons to whom, and of the place at which such slander was

¹ *Primrose v. Lawrence*, 11 Ad. & E. 282.

² *Cooke v. Wildes*, 5 El. & Bl. 340; 24 L. J. Q. B. 367; *Popham v. Pickburn*, 7 H. & N. 891; 31 L. J. Ex. 133; *Andrews v. Nott-Bower*, 1895, 1 Q. B. 888; 72 L. T. 590. [*Malcolm v. Duncan*, 24 R. 727.]

³ *Humphreys v. Stillwell*, 2 F. & F. 590. [*Wallace v. Money*, 12 R. 710.]

⁴ *Seaman v. Netherclift*, 2 C. P. D. 53; 46 L. J. C. P. 128; [*Page v. Buchan*, 17 D. 1079].

⁵ *Loog v. Bean*, 26 C. D. 306; *Bonnard v. Perryman*, 65 L. T. 506.

⁶ *Reg. v. Newman*, Dears. C. C. 85. [The essence of the action in S. is that it was made without reasonable and probable cause, and this must be alleged: *Dallas v. Mann*, 15 D. 746; *Cameron v. Hamilton*, 18 D. 426. Probable cause is for the judge: *Fraser v. Hill*, 1 Macq. 392. Truth is a justification: *Torrance*, 7 Macph. 243.]

⁷ *Weaver v. Lloyd* 4 D. & R. 280. See *Zierenberg v. Labouchere*, 1893, 2 Q. B. 183.

uttered.¹ But where a slander imputing a specific charge is justified in the defence, particulars of such plea are unnecessary, and will not be ordered.²

Evidence will be rejected where the particular facts and circumstances sought to be proved are not stated or referred to in the defence,³ but any evidence is admissible to prove the absence of malice on the part of the defendant with a view to mitigate the damages.⁴ A communication being shewn to be privileged, it lies on the plaintiff to prove malice in fact; in order, however, to entitle him to have the question of malice left to the jury, he need not shew circumstances necessarily leading to the conclusion that malice existed, or such as are inconsistent with its non-existence, but they must be such as raise a probability of malice, and be more consistent with its existence than with its non-existence.⁵ The defendant may (after notice to the plaintiff delivered with his defence) give in evidence in mitigation of damages, that he made or offered an apology before the commencement of the action, or as soon thereafter as he had opportunity to do so.⁶ Where the defendant does not by his defence assert the truth of the statement complained of, he cannot give evidence in chief to mitigate damages as to the circumstances of publication or the character of the plaintiff unless by leave of the judge or seven days before trial he furnish particulars to the plaintiff of the matters as to which he intends to give evidence.⁷

Whenever injury has been done to the fair fame, reputation or character of the plaintiff, the jury is justified in giving such a sum by way of damages as marks their sense of the maliciousness or recklessness of the wrongdoer in offering the insult and injury, their belief in the groundlessness of the charge and their desire to vindicate the character of the plaintiff,⁸ and the Court will never interfere unless the damages are manifestly outrageous and extravagant.⁹ Persistence in the charge heightens the damage,¹⁰ and substantial damages may be awarded without proof of actual injury.¹¹

The right to trial by jury is the same as in actions of false imprisonment.¹²

The action must be commenced within two years next after the words spoken.¹³

¹ *Bradbury v. Cooper*, 12 Q. B. D. 94; 32 W. R. 32.

² *Cumming v. Green*, 7 T. L. R. 408.

³ *Scott v. Sampson*, 8 Q. B. D. 491; *Wood v. Durham*, 59 L. T. 142.

⁴ *Pearson v. Lemaitre*, 6 Sc. N. R. 607. [In S. in unprivileged slander the pursuer need only prove the use of the words, and the only competent answer is that they were true.]

⁵ *Somerville v. Hawkins*, *ubi supra*; *Jenoure v. Delmege*, 63 L. T. 814; [1891] A. C. 73; 39 W. R. 388; [*Arthur v. Lindsay*, 22 R. 417].

⁶ 6 & 7 Vict. c. 96, s. 1. [Not applicable to S.]

⁷ Order xxxvi., r. 37; County Court Rules, Order x., rr. 16, 17.

⁸ *Doe v. Filliter*, 13 M. & W. 51.

⁹ *Gilbert v. Burtenshaw*, Cowp. 230; Loft. 771.

¹⁰ *Simpson v. Robinson*, 12 Q. B. 511; *Bey v. Whitehouse*, 18 L. T. 615.

¹¹ *Tripp v. Thomas*, 3 B. & C. 427.

¹² See *ante*, p. 192. As to withdrawing the case from the jury, see *O'Brien v. Salisbury*, 64 J. P. 215; 6 T. L. R. 133.

¹³ 21 Jac. I. c. 16, s. 3. [As to costs S., 31 & 32 Vict. c. 100, s. 40.]

*Trespass to Personalty.*¹

Every direct forcible injury or act disturbing the possession of goods without the owner's consent is a trespass; and if it amount to a deprivation of possession to such an extent as to be inconsistent with the rights of the owner, it then becomes a wrongful conversion.² A person who has moved the goods of another without a lawful right to do so, even to put them out of the way, is liable for the natural consequences of the removal.³ Every interference with a man's lawful business or occupation without lawful excuse is actionable, such as driving the plaintiff's tenants from their holdings by menaces,⁴ or preventing people by the use of threats and intimidation from trading with the plaintiff's vessel in a foreign port,⁵ or from dealing at the plaintiff's shop, or from sending their children to the plaintiff's school, or placing obstructions and impediments in the way of the exercise of the right of free access to a man's place of business.⁶

With regard to the sheriff, it is laid down that if he seize goods after a tender of the debt and costs, he is liable,⁷ but not if he take goods on an execution which is afterwards set aside for irregularity,⁸ or if he merely seize goods which are privileged from seizure,⁹ or under concurrent writs.¹⁰

Trespass *vi et armis* lies against a sheriff for taking the goods of A instead of B by his bailiff upon a *fi. fa.*¹¹ And if there are two persons of the same name and address, and a writ issues against one of them, and the sheriff through inadvertence or mistake executes the writ against the wrong person, he is liable.¹²

Where under a *fi. fa.* against A the furniture in his house was seized and sold, where he lived with a woman with whom he had gone through the ceremony of marriage, and to whom the goods belonged before marriage, it was held that the woman having afterwards discovered that the marriage was void, might maintain an action against the sheriff, and recover the value of the goods, although it exceeded the price for which they were sold.¹³ But where the property belonged to a woman who cohabited with the debtor, assumed his name, and represented herself as his wife, the action was not maintainable.¹⁴

¹ The corresponding action in S. is that of spuilzie which is a penal action.

² Underhill, Torts, 6th ed., 316. Possession is sufficient title to maintain the action: *Smith v. Miller*, 1 T. R. 480; *Walker v. Baird*, 1892, A. C. 286. As to conspiracy, see *Mogul Steamship v. Macgregor*, 1892, A. C. 25; 66 L. T. 1.

³ *Walker v. Sharman*, 3 F. & F. 259.

⁴ 1 Roll. Abr. 108, pl. 21.

⁵ *Tarleton v. M'Gawley*, Peake 270.

⁶ *Bell v. Midland Railway Co.*, 10 C. B. N. S. 307; 30 L. J. C. P. 273.

⁷ *Lefans v. Moregreen*, 1 Keb. 655; *Barker v. St. Quintin*, 12 M. & W. 441;

13 L. J. Ex. 144; [*Clyne v. Murray*, 9 S. 338; *Ritchie v. Dunbar*, 11 D. 282].

⁸ *Doe v. Thorn*, 1 M. & S. 425.

⁹ *Rideal v. Fort*, 11 Ex. 847.

¹⁰ *Lee v. Dangar*, 1892, 1 Q. B. 231; 66 L. T. 162.

¹¹ *Sanderson v. Baker*, 3 Wils. 309; 2 W. Bl. 842; *Ackworth v. Kempe*, 1 Doug. 40.

¹² *Jarmain v. Hooper*, 1 D. & L. 769; 6 M. & G. 827; 13 L. J. C. P. 63.

¹³ *Glasspoole v. Young*, 9 B. & C. 696; [*Nelmes*, 10 R. 891].

¹⁴ *Edwards v. Farebrother*, 2 M. & P. 293.

The sheriff is liable to an action by the owner of goods lent on hire if having seized them under an execution against the hirer, he sells the entire property in them; but the hirer must have given notice to the sheriff on the seizure,¹ and for the mere seizure without sale he is not liable.²

As to interpleader proceedings, see *ante*.³ Where neither the premises nor the goods belong to the debtor, the sheriff may on such proceedings be protected against an action for trespass, or for wrongful seizure if no substantial grievance has been done.⁴

And where the sheriff is directed to levy on the goods of a wrong person, he is under no liability for so doing.⁵

An action lies at the suit of an administrator for taking away the goods of an intestate.⁶ But where an executrix used the goods of her testator as her own, and afterwards married, and then treated them as the goods of the husband, it was held that the action was not maintainable.⁷

A landlord may maintain an action against him for removing goods before the rent has been satisfied,⁸ and so may his executor,⁹ but not the administrator, whose title dates from a time when the execution is complete.¹⁰ Where the bailiff in possession of goods under a landlord's distress received a *fi. fa.* from a sheriff and sold the goods under it, the sheriff was held liable to action at the suit of the landlord.¹¹

Where the sheriff sells more than sufficient to satisfy the debt and costs he is liable for the excess.¹² And he is also liable, if he sell for less money than ought to have been obtained.¹³ But if a judgment debtor have a qualified interest only as a bailee in goods seized, and the sheriff, having no notice thereof, sells them absolutely, he is not guilty of a conversion by the mere act of selling. It must be shewn that he parted with the possession of the goods and caused them to be used by the purchaser.¹⁴ Nor is he liable for selling contrary to an unauthorised order on behalf of the creditor to postpone the sale.¹⁵ And if he sell goods under a *fi. fa.*, and afterwards the judgment is reversed, the defendant cannot have restitution, but the value for which they were sold.¹⁶

¹ *Dean v. Whitaker*, 1 C. & P. 347.

² *Duffil v. Spottiswoode*, 3 ib. 435.

³ Page 172.

⁴ *Smith v. Critchfield*, 14 Q. B. D. 873.

⁵ *Morris v. Salberg*, 22 Q. B. D. 615; 58 L. J. Q. B. 275; 61 L. T. 283; 37 W. R. 469.

⁶ *Thorpe v. Stallwood*, 1 D. P. C. 24.

⁷ *Quick v. Staines*, 1 B. & P. 293.

⁸ *Calvert v. Jolliffe*, 2 B. & Ad. 418; *Haythorn v. Bush*, 2 Dowl. 641; 2 C. & M. 689; *Cocker v. Musgrove*, 15 L. J. Q. B. 965.

⁹ *Palgrave v. Windham*, 1 Stra. 212.

¹⁰ *Waring v. Dewberry*, ib. 97.

¹¹ *Reddell v. Stowey*, 2 M. & Rob. 358; *Gordon v. Harper*, 7 T. R. 9; *Bible v. Hussey*, 2 C. L. Ir. 308.

¹² *Batchelor v. Vyse*, 4 M. & Sc. 552; *Aldred v. Constable*, 6 Q. B. 370; [*Henderson v. Rollo*, 10 M. 104]; *Hughes v. Browne*, 7 L. R. Ir. 492.

¹³ *Gawler v. Chaplin*, 2 Ex. 506; 18 L. J. Ex. 42.

¹⁴ *Lancashire Co. v. Fitzhugh*, 6 H. & N. 502; 30 L. J. Ex. 231.

¹⁵ *Whyte v. Nutting*, 1896, Q. B. L. 241.

¹⁶ *Hoe*, 5 Rep. 90 b.

If the Admiralty marshal pursue a ship and arrest her after she has sailed, he would appear to be liable to this action.¹

In the County Court, where the judge had adjudicated in favour of a claimant whose house had been broken and entered and his goods seized and taken away as the goods of an execution debtor, it was held that the claimant could not afterwards proceed in an action of trespass for taking away the goods.²

And where a water-bailiff removed what proved to be an illegal fixed engine from a salmon river, it was held that an action against him for such removal was not sustainable.³ Nor does an action lie against a surveyor for removing a bar to a public way.⁴

With regard to wrongful distress,⁵ it has been held that the jurisdiction of the High Court is not ousted by the Taxes Act.⁶ And where the plaintiff who was the owner and occupier of the vicarial tithes and occupier of the rectorial tithes on which the land-tax had been redeemed, was assessed to land-tax for a gross sum for both, which, on demand, he refused to pay, whereupon the collector distrained, it was held that trespass lay for the distress, and that the plaintiff was not bound to appeal.⁷ A conviction on a statute on the face of it, not shewing that any offence had been committed, is bad, and although it has not been quashed, its invalidity may be taken advantage of on the trial of an action of trespass for a distress taken under a warrant grounded upon it.⁸ But a party making a wrongful distress for two causes as to one of which he is entitled to protection, is liable in trespass as to the other.⁹ And parties executing distress for poor-rate are liable if they commit any excess not excused by law.¹⁰ And so is a highway surveyor if he execute a warrant for highway-rate against a person not chargeable.¹¹

Where a revenue officer unlawfully seizes goods as forfeited, and unlawfully detains them, and takes money which he has no right to take as the condition of their release, he is liable to action.¹² But where goods liable to duty have been landed and warehoused and examined by officers in the regular execution of their duty, no action can be maintained against such officers for the detention of goods under a belief that they are liable to forfeiture, though it ultimately appears that they were not so liable.¹³ And condemnation in the

¹ *Borjesson v. Carlberg*, 3 A. C. 1816; [*Petersen v. McLean*, 6 M. 218].

² *Chater v. Chigwell*, 14 Jur. 697; 19 L. J. Q. B. 520; 15 Q. B. 217; [*Le Conte v. Douglas*, 8 R. 175].

³ *Williams v. Blackwall*, 8 L. T. 252; 32 L. J. Ex. 174; 11 W. R. 621; [*McLellan v. Ramsay*, 3 S. 306].

⁴ *Pullin v. Deffel*, 64 L. T. 134.

⁵ The ancient remedy for wrongful distress was *replevin*, which is now obsolete except in I. and in the County Court; Gilbert on Repl., p. 138; County Court Rules, 1889, Order xxxiv.; Pollock, *Torts*, 2nd ed., 299. In such an action

24 Geo. II. c. 44, s. 6 is inapplicable: *Milward v. Caffin*, 2 Bl. 1331; and see *ante*, p. 158.

⁶ *Shaftesbury v. Russell*, 1 B. & C. 666.

⁷ *Charleton v. Alway*, 11 A. & E. 993.

⁸ *Gimbert v. Coyney*, M'Lel. & Y. 46.

⁹ *Lamont v. Southall*, 7 D. P. C. 569.

¹⁰ *Bell v. Oakley*, 2 M. & S. 259; [*Oakeley v. Campbell*, 6 M. 12].

¹¹ *Freeman v. Read*, 32 L. J. M. C. 226.

¹² *Irving v. Wilson*, 4 T. R. 485.

¹³ *Jacobson v. Blake*, 6 M. & G. 919; 13 L. J. C. P. 89; *De Gordonin v. Lewis*, 2 P. & D. 283.

Exchequer is conclusive against any such action being maintainable.¹ Where action was brought after the penalty had been paid, and there had been no demand for return of the goods, it was held not to lie.²

And where a police officer came into possession of a ring which the plaintiff was supposed to have stolen, but was acquitted on the hearing of the charge, and no order having been made by the magistrate with regard to it, refused to give it up, it was held that the officer was not liable to action at the suit of the plaintiff for the detention.³

Where a postmaster delivered up letters of a bankrupt to a trustee believing *bonâ fide* that he was entitled to them, it was held he was not liable under 9 Anne c. 10, s. 40, for wittingly, willingly and knowingly detaining letters and causing them to be detained and opened.⁴

The Court will not, in the absence of a trust, restrain the sheriff from selling the goods of a stranger found upon the land of a person against whom execution had issued.⁵ But if goods have been wrongfully seized by him it is otherwise, and he may be restrained from selling or remaining in possession, but the execution creditor should either be made a party to the action or notice should be served on him before the injunction is granted. The plaintiff will not get his costs of such an action prematurely brought.⁶

In an action against the sheriff the claim after reciting that two writs of *fi. fa.* had been delivered to him to be executed stated that defendant as such sheriff, under colour of the writs, wrongfully seized the goods of the plaintiff to a much greater value than necessary to satisfy, and sold the same. This was held sufficient.⁷

The most usual defence in actions for taking the plaintiff's goods is that they had been fraudulently assigned. This charge is admissible under a denial of the plaintiff's property.⁸ But the defendant cannot shew that the plaintiff became assignee after delivery of the writ to the sheriff.⁹ If the defence is fraudulent assignment, the intent must be proved.¹⁰ The fact of no sufficient consideration is evidence of fraud.¹¹

In actions for removing goods seized without paying the rent after notice of its being due, no averment of notice to the execution-creditor is necessary.¹² But if the action is founded on the statute, notice to the sheriff is always alleged and should not be omitted.¹³

¹ *Scott v. Shearman*, 2 W. Bl. 977.

² *Hutchings v. Morris*, 6 B. & C. 464.

³ *Bullock v. Dunlap*, 2 Ex. D. 43; 46 L. J. Ex. 156; 86 L. T. 194; 25 W. R. 293.

⁴ *Meirelles v. Banning*, 2 B. & Ad. 909. See 2 Stra. 1005.

⁵ *Garstin v. Asplin*, 1 Madd. 151; *Jackson v. Stanhope*, 15 L. J. Ch. 466.

⁶ *Hilliard v. Hanson*, 21 Ch D. 69; *Aylwin v. Evans*, 47 L. T. 568.

⁷ *Gawler v. Chaplin*, *ubi sup.*

⁸ *Ashby v. Minnitt*, 8 Ad. & E. 121.

⁹ *Samuel v. Duke*, 3 M. & W. 622.

¹⁰ *Ex p. Mercer*, 17 Q. B. D. 290; *Godfrey v. Poole*, 13 A. C. 497.

¹¹ *Gale v. Williamson*, 8 M. & W. 205.

¹² *Risely v. Ryle*, 11 M. & W. 16; 12 L. J. Ex. 322.

¹³ *Thurgood v. Richards*, 7 Bing. 428; 4 C. & P. 481; see *Reid v. Poyntz*, 6 M. & W. 210.

And where in such an action the defence was that the sheriff seized goods which were alleged to belong to S, but which did not, in fact, belong to him, the plaintiff was nevertheless held entitled to a verdict.¹ It is not sufficient for the defendant to shew in mitigation of damages that the goods realised less than the amount of the rent, but he must prove that their actual value to the landlord at the time of removal was less.²

Where a sheriff's officer, having a *fi. fa.* against A, called at his house when he was from home, waited till he returned, and then informed him of his business, this was held sufficient to warrant the jury in finding that the writ was executed at the time of the officer's entry.³ A sheriff justifying in trespass under a writ of *fi. fa.* need not shew his authority.⁴

In an action for abusing the process of the Court in order illegally to compel a party to give up his goods, it is not necessary to prove that the action under which the process was improperly employed has determined, nor to aver that the process was sued out without reasonable and probable cause.⁵ If the goods of a third party are seized as the debtor's, and he allows time to elapse before enforcing his rights, he is estopped from denying that the goods are the debtor's.⁶

[In Scotland, malice and want of probable cause must be averred and proved in an action of damages founded on an arrestment of a ship on the dependence of an action from which the defender was assolizied.⁷ But this is not necessary in an issue of damages against a customs officer.]⁸

An affidavit made by a sheriff's officer under the Interpleader Act respecting the goods is admissible to prove the officer to be the servant of the sheriff.⁹

And where plaintiff, being owner and occupier of the vicarial tithes and occupier of the rectorial tithes, on which latter tithe the land-tax had been redeemed, was assessed to land-tax on a gross sum for which on refusal, the collector distrained, it was held that the demand having been made for a sum alleged to be due for a quarter then expired, defendant could not justify the distress by shewing that a sum was due at the expiration of the current quarter for vicarial tithes which would cover the sum distrained for.¹⁰

In an action for excessive distress it is not necessary to prove express malice.¹¹

Damages must be both alleged and proved in action against the sheriff for wrongful seizure,¹² and any special damage that has been

¹ *Fowler v. Cookson*, 1 Q. B. 419. *

² *Thomas v. Mirehouse*, 19 Q. B. D. 563; 36 W. R. 104.

³ *Bird v. Bass*, 6 M. & G. 143; 6 Sc. N. R. 928.

⁴ *Cheaseley v. Barnes*, 10 East 73; 993.

⁵ *Ogden v. Hesketh*, 2 C. & K. 772.

⁶ *Grainger v. Hill*, 4 Bing. N. C. 212; 5 Sc. 261.

⁷ *Pickard v. Sears*, 6 A. & E. 469.

⁸ *Wolthekear*, 35 Jur. 156.

⁹ *Christie v. Thompson*, 20 D. 1114; cf. *Watt v. Blair*, 1 S. App. 48.

¹⁰ *Brickill v. Hulse*, 2 N. & P. 426.

¹¹ *Charleton v. Alway*, 11 A. & E.

¹² *Field v. Mitchell*, 6 Esp. 71.

¹³ *Tancred v. Allgood*, 4 H. & N. 444; 28 L. J. Ex. 362.

sustained is recoverable.¹ The plaintiff is entitled to be placed in the same position as if the defendant had done his duty.² But all the probabilities must be looked at.³

Where the defendants had become trespassers *ab initio* by breaking the door, the jury were rightly directed that they might give damages in respect of all the injuries complained of.⁴ In an action for removing goods without paying the rent due the measure of damages is *prima facie* the amount of rent, but the sheriff may prove that the value of the goods removed was less than that amount.⁵ The price of the goods sold is not necessarily, but is usually, the measure of damages if the sale be wrongful.⁶ In an action for taking goods under irregular process, where special damage is alleged and claimed but not proved, the plaintiff is entitled to nominal, or such substantial damages as the jury thinks fit.⁷

Whenever a public officer has wrongfully seized and detained goods from the owner, the latter is entitled to recover the loss resulting from the wrongful act, so that if the property detained has fallen in value in the market, the plaintiff is entitled to add the amount of that to the damage he has sustained.⁸

The action must be commenced within four years after the cause thereof.⁹

*Trespass to Realty.*¹⁰

Every unauthorised entry upon or direct interference with another's land is a trespass for which an action lies without proof of actual damage.¹¹ And if a man abuse an authority given him by the law as distinguished from that of the party, as in leave and licence, he becomes a trespasser *ab initio*.¹² But mere non-feasance does not constitute him such a trespasser.¹³

If there is an abuse of authority by which the party becomes a trespasser *ab initio*, the plaintiff is entitled to recover damages as well for the part or injury which would have been justified if there had been no abuse as for the part which is directly caused by the abuse.¹⁴ And the rule that a party cannot be made a trespasser by

¹ *Keene v. Dilke*, 4 Ex. 388; 18 L. J. Ex. 440.

² *Aireton v. Davis*, 9 Bing. 740; *Bales v. Wingfield*, 4 Q. B. 580, n.

³ *Hobson v. Thellusson*, L. R. 2 Q. B. 642; see *Lee v. Dangar*, 1892, 1 Q. B. 231.

⁴ *Kerbey v. Denby*, 1 M. & W. 336; 2 Gale, 31.

⁵ *Thomas v. Mirehouse*, *ubi sup.*

⁶ *Whitehouse v. Atkinson*, 3 C. & P. 244; *Lee v. Lopes*, 15 East 230.

⁷ *Doss v. Doss*, 14 L. T. 646; [*Snaddon v. Stewart*, 2 Mur. 72].

⁸ *Barry v. Armand*, 8 Q. B. 609; [*O'Neil v. Dumfries*; *Beattie v. McLellan*, *ante*, p. 192].

⁹ 21 Jac. I. c. 16, s. 3; [S., 3 years, 1579, c. 81. As to costs, see 31 & 32 Vict. c. 100, s. 40].

¹⁰ This action answers in S. *semble* to that of ejection which is penal.

¹¹ Underhill, p. 308. Possession is a sufficient title to maintain the action: *Jones v. Chapman*, 2 Ex. 821; see *Walker v. Baird*, 1892, A. C. 491.

¹² As to this doctrine, see *ante*, pp. 150, 157.

¹³ *Six Carpenters' Case*, 8 Rep. 146 a.

¹⁴ *Kerbey v. Denby*, 1 M. & W. 341; 2 Gale, 31; *Aitkenhead v. Blades*, 5 Taunt. 198.

relation is only applicable where the act complained of was lawful at the time.¹

This action will lie for continuing on the premises and disturbing the plaintiff's possession after the time allowed by law,² or after distress made.³

If a sheriff remain on premises for the purpose of putting the purchaser of a lease in possession he would be liable to this action at the suit of the debtor if in possession, although the premises had been sold and transferred.⁴

Where a judge of the County Court adjudicated in favour of a claimant whose house had been broken and entered and his goods seized and taken away as those of the execution debtor, it was held that the claimant was afterwards entitled to proceed for the special damage occasioned by the wrongful breaking and entry.⁵

Where a search warrant was executed by a constable to whom it was not addressed, this action was held to lie.⁶ But where a constable on hearing a noise in a public house at one o'clock in the night, entered the house, the door being open, the action was held not to lie.⁷

Where churchwardens entered premises in pursuance of an order of the Secretary of State, which proved to be invalid, they were held liable.⁸

Overseers executing a distress for poor-rate are liable if they commit any excess not excused by law.⁹

A surveyor who had removed by order of the highway board the locks from a gate placed across a footpath by the occupier of the land through which it ran, was held liable to this action notwithstanding the order of the board,¹⁰ and so also was he where he dug away the plaintiff's bank without authority, although evidence was given that the property was thereby improved,¹¹ and where on an order to lop trees he topped them.¹²

An attempt to eject by force a person having a legal title to land brings the person who makes it within the statute against forcible entry,¹³ and damages cannot be recovered in such case,¹⁴ except for independent wrong committed in the course of such entry.¹⁵ But an

¹ *Thorpe v. Stallwood*, 5 M. & G. 760.

² *Winterbourne v. Morgan*, 2 Camp. 117; *Lee v. Dangar*, *ubi sup.*

³ *Ladd v. Thomas*, 4 P. & D. 9.

⁴ *Playfair v. Musgrove*, 14 M. & W. 239; 15 L. J. Ex. 26; *Read v. Harrison*, 2 W. Bl. 1218; see *Bagshawes v. Deacon*, 1898, 2 Q. B. 173.

⁵ *Chater v. Chigwell*, 14 Jur. 697; 19 L. J. Q. B. 520; 51 Q. B. 217.

⁶ *Freegard v. Barnes*, 7 Ex. 827; 21 L. J. Ex. 320.

⁷ *R. v. Smith*, 6 C. & P. 136.

⁸ *Foster v. Dodd*, L. R. 3 Q. B. 67.

⁹ *Bell v. Oakley*, 2 M. & S. 259.

¹⁰ *Mill v. Hawker*, L. R. 10 Ex. 62; 44 L. J. Ex. 49; 33 L. T. 177; 38 W. R. 346.

¹¹ *Alston v. Scales*, 9 Bing. 3.

¹² *Unwin v. Hanson* [1891], 2 Q. B. 115.

¹³ *Laws v. Telford*, 1 App. Cas. 414; 45 L. J. Ex. 613; 35 L. T. 69; and see *infra*, p. 216.

¹⁴ *Newton v. Harland*, 1 M. & G. 244.

¹⁵ *Beddall v. Maitland*, 17 Ch. D. 174.

allegation *vi et armis* in an action for breaking and entering does not imply a forcible entry.¹

The Court will not, it appears, grant an injunction in respect of an interference with a church way at the suit of a parishioner, the ecclesiastical courts having jurisdiction in such cases.² But a local authority interfering with property in an unauthorised manner, as, *e.g.*, when not authorised under the Public Health Act, will be restrained, and the plaintiff will not be left to his remedy under the compensation clauses.³ An appeal to a superior board does not oust the jurisdiction of the Court.⁴ If a public board exceed the due limits of their authority, and commit acts of nuisance, whether of a public or private⁵ nature, the Court may restrain by injunction,⁶ unless the jurisdiction is expressly negatived.⁷ As regards apprehended injury, the Court will not usually interfere unless the damage will be irreparable.⁸

If the defendant relies upon the defence of leave and licence, he must prove either an express permission from the plaintiff,⁹ or circumstances from which such permission may fairly be implied.¹⁰ The defendant may justify under a sufficient legal process, if he had it in fact at the time, although he declared then that he entered for another cause.¹¹ To render a defendant liable as a trespasser *ab initio*, facts sufficient to support this must be stated in the claim.¹² The action may be well laid to have been done under a false charge and assertion, for that is laid only as a matter of aggravation, and the jury may give damages for the trespass, as it is aggravated by such false charge.¹³ In an action for breaking and entering plaintiff's house and expelling him therefrom, the breaking and entering are the gist of the action, and the expulsion is merely aggravation; therefore a justification as to the breaking and entering will cover the whole claim.¹⁴

The defendant may give in evidence that he entered by virtue of a warrant and was turned out, whereupon he committed the trespasses complained of.¹⁵ But a party who insists on remaining on the land

¹ *Harvey v. Bridges*, 14 M. & W. 442; 1 Ex. 261.

² *Batten v. Gedge*, 41 C. D. 507.

³ *Grand Junction Canal v. Shugar*, 6 Ch. App. 483.

⁴ *Tinkler v. Wandsworth*, 2 De G. & J. 261.

⁵ *Boz v. Allen*, 1 Dick. 49.

⁶ *Att.-Gen. v. Forbes*, 2 M. & C. 133.

⁷ *Birley v. Chorlton*, 3 Beav. 499.

⁸ *Palmer v. Paul*, 2 L. J. Ch. 154; *Fletcher v. Bealey*, 28 Ch. D. 688. See also as to injunctions, *Att.-Gen. v. Metropolitan Board of Works*, 1 H. & M. 320; *Macey v. ib.*, 33 L. J. Ch. 377; *Bateman v. Poplar*, 87 Ch. D. 272; *Att.-Gen. v. Richmond*, 2 Eq. 906; *Ellis v. Bridgworth*, 2 J. & H. 67.

⁹ *Kavanagh v. Gudge*, 7 M. & G. 316.

¹⁰ *Ditcham v. Bond*, 3 Camp. 524.

¹¹ *Crowther v. Ramsbottom*, 7 T. R. 654; and *cf. Playfair v. Musgrove*, 14 M. & W. 239; 3 D. & L. 72; 15 L. J. Ex. 26.

¹² *Shoreland v. Govett*, 8 D. & R. 257; 5 B. & C. 485; and see *Morrish v. Murray*, 13 M. & W. 52; 13 L. J. Ex. 261; and *Johnson v. Leigh*, 1 Marsh. 565; 6 Taunt. 246.

¹³ *Bracegirálle v. Orford*, 2 M. & S. 77.

¹⁴ *Taylor v. Cole*, 3 T. R. 292.

¹⁵ *Eagleton v. Gutteridge*, 11 M. & W. 465.

of another against his will, and therefore *prima facie* against right, ought to shew all the circumstances which make such possession lawful and abridge the just rights of property.¹ Where the defendant put in an informal affidavit to the effect that he had entered under a warrant to search for dutiable goods, it was held no defence.² And where a local authority is sued for a trespass, it is incumbent on them to prove affirmatively from the statute the existence of the power which they claim to exercise.³

Where the defendants had become trespassers *ab initio* by breaking the door, the jury were rightly directed that they might give damages in respect of all the injuries complained of.⁴ The true criterion of damages has been held to be the whole injury which the plaintiff has received.⁵ If the entry is made after notice or warning not to trespass or is a wilful or impertinent intrusion upon a man's domestic privacy, or an insulting invasion of his proprietary rights, a very serious cause of action will arise, and exemplary damages be recoverable.⁶ But it has been held that a plaintiff is not entitled to recover as damages the costs of setting aside a warrant, and all subsequent proceedings under which the trespass was committed.⁷

The action must be commenced within six years next after the cause thereof.⁸

¹ *Hayling v. Okey*, 8 Ex. 531.

² *R. v. Moseley*, 1 C. & K. 718.

³ See *Sutton v. Norwich*, 27 L. J. Ch. 741; *Simpson v. Staffordshire Railway*, 34 *ib.* 387.

⁴ *Kerby v. Denbey*, *ubi supra*.

⁵ *Clark v. Newsam*, 1 Ex. 131; 16 L. J. Ex. 297.

⁶ *Merest v. Harvey*, 5 Taunt. 443.

⁷ *Holloway v. Turner*, 6 Q. B. 928.

⁸ 21 Jac. I. c. 16, s. 3. [S., 3 years, 1579, c. 81. As to costs, see 31 & 32 Vict. c. 100, s. 40.]

CRIMINAL PROCEEDINGS.

Attachment.

Attachment is the punitive process to which the High Court resorts for excess of public duty on the part of its officers. As a remedy to an individual it is like all other public process only available where damage has been sustained through such excess of duty, by such individual.¹

Being confined to officers of the Court it is only available against the Sheriff, the Admiralty Marshal, the Tipstaff, and the High Bailiff.²

As against the sheriff it has been laid down that attachment may be moved for in any of the following cases :—

Arrest without authority.

Breaking doors without excuse.

Corrupt practices.

Detaining person till he pays money for his release.

Extortion.

False return, where circumstances of hardship to plaintiff.

Force, using needless.

Ill-treating persons arrested.

Neglecting to execute.³

The process must be moved for within a reasonable time.⁴

If the sheriff has executed the writ and has in his hands or possession, the proceeds of the execution, he is at once liable to this process.⁵ But the old rule as to attachment absolute in the first instance is abrogated.⁶

¹ *Soltan v. de Held*, 2 Sim. N. S. 133. [The messenger-at-arms in S. is the officer of the Lord Lyon. He can deprive or suspend him for malversation : *Clyne*, 9 S. 338. So also can the Court of Session. He may be decerned against to the extent of the penalty contained in the bond of caution : *Hog IV*. Brown Sup. 355. If he take fees or a bill including expenses, he will be liable to summary complaint : *M'Lachlan*, 1 S. 236. The macer is also the officer of the court and so is the sheriff's officer. Every criminal act entitles the injured person to damages, but the pro-

ceedings appear to be only at the suit of the Lord Advocate or Procurator-Fiscal : *Graham*, 2 Broun 85. Private prosecution is practically unknown.]

² See *ante*, p. 175. As to officers other than the sheriff, the process is rarely or never resorted to.

³ Hawk. P. C. Bk. II. c. 22, ss. 2, 3 and 4; and see 50 & 51 Vict. c. 55, s. 29.

⁴ *R. v. Perring*, 3 B. & P. 151.

⁵ *Phillips v. Canterbury*, 11 M. & W. 619; *Botten v. Tomlinson*, 16 L. J. C. P. 138.

⁶ *Jupp v. Cooper*, 5 C. P. D. 26; *Eynde v. Gould*, 9 Q. B. D. 335.

The death of the defendant will not remove the sheriff's liability;¹ but if any of the proceedings against the sheriff be irregular, the Court will set aside the attachment.²

The service of the writ must be personal on the sheriff or his deputy.³ An order for attachment or committal must be applied for on notice.⁴

The process is directed to the coroner when it issues against the sheriff, and to the present sheriff when it issues against his predecessor.⁵

Information.⁶

Every public officer commits a misdemeanour who in the exercise or under colour of exercising the duties of his office, does any illegal act, or abuses any discretionary power with which he is invested by law, from an improper motive, the existence of which motive may be inferred, either from the nature of the act or the circumstances of the case. But an illegal exercise of authority caused by a mistake as to the law, made *bona fide*, is not a misdemeanour.⁷

An officer executing a warrant upon a person absolutely privileged would render himself liable to this process.⁸

If police officials appear as advocates before justices in cases in which they are not properly prosecutors, they are guilty of misdemeanour by virtue of 6 & 7 Vict. c. 73, s. 2, and the proceedings being irregular, a conviction will be quashed.⁹

Refusing admission to persons into a Court of petty sessions, when an open Court is another instance.¹⁰

Where, some years since, a murder had been committed, a police official held a sort of informal inquiry into the circumstances attending the murder. This was clearly an excess of authority, and rendered the officer liable to this process.¹¹ And the same would apply in the case of the illegal practice of interrogating persons under arrest.¹² In the case of any persons whether under arrest or not, there is of course no obligation to answer. Such obligation is usually confined to witnesses in open Court.

¹ *R. v. Sheriff of Middlesex*, 3 T. R. 133.

² *R. v. Sheriff of Middlesex*, 2 M. & S. 562.

³ *Woodland v. Fuller*, 11 A. & E. 859; 2 P. & D. 570.

⁴ Tidd., 8th ed., 314; Chit. Arch., 7th ed., 556.

⁵ Order xlv., r. 2. *Jupp v. Cooper*, *ubi supra*.

⁶ In the case of offences not cognisable by a Court of Summary Jurisdiction, the remedy is of course by indictment.

⁷ Steph. Dig. Crim. Law, Art. 121; 1 Salk. 380; Cro. Eliz. 654.

⁸ See *ante*, p. 7 and *ex p. Smith*, 7 Tl. L. R. 42.

⁹ *Nicholson v. Naylor*, 57 L. J. M. C. 43; 58 L. T. 157; and see *Kyle v. Barber*, 58 L. T. 229; and *R. v. Bushell*, 16 Cox 367. I., see 25 & 26 Vict. c. 50. In the case of revenue officers, they are entitled to conduct cases before justices. See 53 & 54 Vict. c. 21, s. 27, and 39 & 40 Vict. c. 36, s. 273; 58 & 59 Vict. c. 37, s. 51; *Dyer v. Tully*, 1894, 2 Q. B. 794; 43 W. R. 61.

¹⁰ 11 & 12 Vict. c. 42, ss. 17, 19.

¹¹ See Amos on the Constitution, 3rd ed., pp. 131, 134.

¹² Taylor, Evidence, 6th ed., 779; [Millar, 3 Irv. 406].

An information lies also against officers employed by or under the post office if they suffer letters to be hindered, delayed or opened,¹ and also against persons not so employed.²

It also lies against highway surveyors for not filling up and fencing holes within due time,³ for causing stones or other obstructions to remain at night on the highway to the danger of passengers,⁴ for digging for materials whereby any bridge, building, etc., is damaged,⁵ and in these cases the civil liability remains.

Tax collectors and overseers are also liable to this process for taking more than the fees allowed on a distress.⁶ And so are workhouse and asylum officers for unlawful detention of a lunatic,⁷ or for ill-treatment,⁸ or abuse of a female lunatic.⁹ But the mode of procedure in these cases is limited to that of prior consent of the Crown law officers, except where commenced by superior officers.¹⁰

As has been above stated, inasmuch as the Sheriff, Admiralty Marshal, Tipstaff, and High Bailiff are liable to attachment, this remedy is not open against them.¹¹

Assault and Battery.

An assault is an attempt or offer with force and violence to do a corporal hurt to another as by striking at him with or without a weapon, or presenting a gun at him at such a distance as the gun will carry, or pointing a pitchfork at him standing within reach of it. or by holding up one's fist to him, or by any such like act done in an angry, threatening manner.¹² Any injuries whatsoever, be they ever so small, being actually done to the person of a man, in an angry, revengeful, rude or insolent manner, as by spitting in his face, or anyway touching him in anger, or violently jostling him out of the way, are batteries.¹³

A magistrate has no right to order the examination of the person of a prisoner. Any officer making examination in pursuance of such order is therefore guilty of assault,¹⁴ and so are officers who cut unnecessarily the hair of a pauper in the poorhouse.¹⁵ But it is doubtful whether the mere presentation of a pistol, which is in fact not loaded, at another is an assault,¹⁶ and it is no battery to lay one's hand gently on another whom an officer has a warrant to arrest.¹⁷

¹ 9 Anne, c. 10, s. 40; 7 Will. IV. c. 36, s. 25.

² 54 & 55 Vict. c. 46, s. 10.

³ 5 & 6 Will. IV. c. 50, s. 55.

⁴ Sect. 56; see *Hardcastle v. Beilby*, 1892, 1 Q. B. 709.

⁵ Sect. 57.

⁶ 57 Geo. III. c. 93, s. 6.

⁷ 53 & 54 Vict. c. 5, s. 315.

⁸ Sect. 322.

⁹ Sect. 324.

¹⁰ Sect. 325. Cases may possibly arise where officers with a view to gain

may cause to be published false news as to sedition. This is a misdemeanour: Steph. Dig. C. L., Art. 95.

¹¹ See *ante*, pp. 175, 208.

¹² Hawk. P. C. c. xv. s. 1; *R. v. Baker*, 1 C. & K. 254; *R. v. Duckworth*, 1892, 2 Q. B. 83; 66 L. T. 302. [The law in S. is the same.]

¹³ Hawk. P. C. c. xv. s. 2.

¹⁴ *Agnew v. Jobson*, 13 Cox, C C. 625.

¹⁵ *Forde v. Skinner*, 4 C. & P. 239.

¹⁶ *R. v. Brown*, 10 Q. B. D. 381.

¹⁷ Hawk. P. C. c. xv. s. 2.

But if more force than necessary be used it is otherwise.¹ A person charged with assault and battery may be found guilty of either offence.²

A battery cannot be justified by an officer unless there was resistance in the party,³ and though one cannot justify by pleading *son assault demesne* in the indictment, this may be given in evidence.⁴ It is a good defence to prove that the battery occurred by misadventure,⁵ or that it occurred in arrest on legal process,⁶ provided no greater force than necessary was used,⁷ or in cases not criminal that it was by consent.⁸ It is also a good defence to shew that the complaint has been heard and determined by two justices.⁹

Common Nuisance.

A common nuisance is indictable at common law.

Every injury to public rights which affects all parties alike, such as an obstruction in a public thoroughfare merely impeding the right of passage and rendering the way less convenient, is only remediable by indictment.¹⁰ And all injuries to a highway such as digging a ditch or making a hedge across it, laying timber upon it, or doing any act whereby it is rendered less commodious to the public, are nuisances at common law.¹¹ Although an Act of Parliament authorises alterations or blocking up of a highway, yet if these are not carried out with reasonable care and cause unnecessary danger to persons using the highway, the person carrying out such alterations, etc., may be indicted for obstruction.¹²

Another instance of common nuisance is eavesdropping, which consists of loitering under walls or eaves of a house, to hearken after discourse and thereupon to frame slanderous and mischievous tales. Offenders are apparently indictable at the sessions, and liable to be fined and bound over to good behaviour.¹³

Conspiracy.

By the common law, liberty of a man's mind and will, how he should bestow himself and his means, his talents and his industry, is as much the subject of the law's protection as is that of his body.

¹ *R. v. Mabel*, 9 C. & P. 474; *Levy v. Edwards*, 1 C. & P. 40.

² *Hawk. P. C. c. xv. s. 1.*

³ *Williams v. Jones*, Ca. temp. Hard. 301.

⁴ *Per Holt, C.J., R. v. Cotesworth*, 6 Mod. 172.

⁵ *Gibbons v. Pepper*, 2 Salk. 637; and see *Coward v. Baddeley*, 4 H. & N. 478; 28 L. J. Ex. 260.

⁶ 2 Roll. Abr. 547 a.

⁷ 1 Ld. Ray. 222; 2 Str. 1049; 1 C. & P. 40.

⁸ *R. v. Coney*, 8 Q. B. D. 534.

⁹ 24 & 25 Vict. c. 100, ss. 44, 45.

See *ante*, p. 179.

¹⁰ *Hart v. Basset*, T. Jon. 156; *R. v. Cross*, 3 Camp. 224; *R. v. Russell*, 6 East 427.

¹¹ 1 Hawk. P. C. c. 76, s. 48.

¹² *R. v. Burt*, 11 Cox 399; and see *Lewis v. Vaughan*, 4 Ti. Rep. 649; *Barber v. Penley*, 1893, 2 Ch. 449. [S., see *Ogston v. Aberdeen Co.*, 75 L. T. 633.]

¹³ 4 Bl. Com. 168. [S., common law.]

Therefore, if two or more persons agreed to co-operate against that liberty of thought and freedom of will, they would be guilty of a conspiracy.¹

A conspiracy is an agreement between two or more persons:—

1. Falsely to charge another with a crime either from a malicious or vindictive motive or feeling towards the party, or for the purpose of extorting money from him.

This does not extend to the case where persons consult and agree to prosecute a person who is guilty, or against whom there are reasonable grounds of suspicion.²

2. Wrongfully to injure or prejudice a third person or any body of men in any other manner.

Such as that to injure a man in his trade or profession,³ or to charge a man as the reputed father of a bastard;⁴ but not to commit a mere civil trespass.⁵

3. To commit any offence.⁶

This would apply to the case of officers conspiring with others (not officers)⁷ to do that which would be illegal in themselves such as “shadowing” and watching premises;⁸ and also to perpetrate outrages—as appears to have been done in Ireland, and perhaps in this country also. This latter would constitute in the officer concerned misprision of felony, which consists in knowledge that a felony has been committed and concealment of the fact.

4. To do any act with intent to pervert the course of justice.

Such as that of justices to certify that a highway was in repair when they knew it was otherwise,⁹ and that of procuring persons to commit offences, or to spread rumours that offences are about to be committed, with a view to create general alarm, and in order to obtain rewards for the discovery of offenders or supposed offenders.¹⁰

5. To effect a legal purpose with a corrupt intent or by improper means.¹¹

Nothing need be done in pursuance of the conspiracy,¹² and the indictment need not state the overt acts used to effect the intended mischief.¹³ The word “falsely” need not be used in the indictment,

¹ *Per* Bramwell, B., *R. v. Druitt*, 10 C. C. C. 592; see *Mogul Steamship v. Macgregor*, 1892, A. C. 25; 66 L. T. 1. [In S. this is an offence at common law.]

² *R. v. Best*, 1 Salk. 177; 2 Ld. Ray. 1167; see *Ex parte Wolf*, 28 J. P. 23; and also the cases cited, *ante*, p. 39.

³ *R. v. Eccles*, 1 Leach 274; *R. v. De Kromme*, 56 J. P. 682; [*Brown v. Murray*, 1 R. 776].

⁴ 1 Hawk. c. 72, s. 2.

⁵ *R. v. Turner*, 13 East 228. But see *R. v. Kerrick*, 5 Q. B. 49; 12 L. J. M. C. 135.

⁶ See *Lewis v. Vaughan*, 4 Ti. Rep. 649, and *R. v. Pollman*, 2 Camp. 229, n.

⁷ These other persons are usually “common informers”. History from 28 Ed. I. downwards shews us that this phrase is frequently not easily distinguishable from “false witness”.

⁸ And see *cf.* 38 & 39 Vict. c. 86, s. 7.

⁹ *R. v. Mawbey*, 6 T. R. 619.

¹⁰ *R. v. Macdaniel*, 1 Leach 45; *Fost.* 130; *R. v. Jolliffe*, 4 T. R. 265; *R. v. Thompson*, 16 Q. B. 892; 20 L. J. M. C. 183; and see *R. v. Taylor*, 15 Cox C. C. 265.

¹¹ See *R. v. Parnell*, 14 Cox 508.

¹² *R. v. Best*, *ubi sup.*

¹³ *R. v. Eccles*, *ubi sup.*; *R. v. Kimmersley*, *Stra.* 193.

nor the particular charge be specified, nor need it be laid that the party charged was acquitted.¹

A defence attempting to justify one of the overt acts is bad.² It is not necessary to prove any direct or immediate injury, or even to shew any specific overt act.³ The fact of conspiring need not be directly proved, but may be collected from other circumstances.⁴ Individuals doing individual acts, but with a combined end previously determined on, is evidence of a conspiracy.⁵

Extortion.

This offence, which is punishable by fine and imprisonment, consists in the taking of money by any officer by colour of his office, either where none is due at all, or not so much as is due, or where it is not yet due.⁶ A threat to accuse a man of a crime with intent to extort money is a felony.⁷ The threat may be made personally or to a third person with intent that it should be communicated.⁸ It must be a threat to accuse or an accusation. If A be in custody for an offence, and the defendant threaten to procure witnesses to prove the charge, it is not sufficient,⁹ but it need not be a threat to accuse before a judicial tribunal.¹⁰ And it is immaterial whether the prosecutor be innocent or guilty of the offence imputed,¹¹ if the object be to extort money by means of the accusation.¹²

With regard to the sheriff, he is not liable for the act of his officer in this case.¹³ The under-sheriff is, however, personally liable to this process if he refuse to execute until he has received his fees.¹⁴ It is extortion to arrest a man in order to obtain a release for him,¹⁵ or to obtain money from a prisoner by any colourable means;¹⁶ and so also was it held to be where a collector of duty obtained a sum of money from a person on the allegation, contrary to the fact, that it was due. And in the same case it was held that the mere fact of the officer having paid the money over to his principal made it none the less extortion.¹⁷

Where an officer of the local authority under the Public Health Act was paid extra for work not included in his original agreement,

¹ *R. v. Spragg*, 2 Burr. 993.

² *Gregory v. Brunswick*, 6 M. & G. 205.

³ *R. v. Robinson*, 1 Leach 37.

⁴ *R. v. Parsons*, Black, 392.

⁵ *R. v. Cope*, Stra. 144. The employment by the police of decoys, or of marked money, where the cause of suspicion is not reasonable would amount to a conspiracy.

⁶ 1 Hawk. P. C. 418, s. 1; 3 Ed. I. c. 26. [In S. if the officer take any sum from the defendant or purchase the goods the subject of the levy, he is liable to deprivation—Reg. 1772.]

⁷ 24 & 25 Vict. c. 96, s. 1.

⁸ *R. v. Peddle*, R. & R. 484.

⁹ *R. v. Gill*, 1 Arch. P. A. 302.

¹⁰ *R. v. Robinson*, 2 M. & Rob. 14.

¹¹ *R. v. Gardner*, 1 C. & P. 479.

¹² *R. v. Richards*, 11 Cox 43.

¹³ *Per Ashurst, J.: Woodgate v. Knatchbull*, 2 D. & East 154; and see *Bagge v. Whitehead*, ante, p. 173.

¹⁴ *Hescott*, 1 Salk. 330. I., 27 & 28 Vict. c. 99, ss. 17, 18.

¹⁵ *Williams v. Lyons*, 8 Mod. 189.

¹⁶ *R. v. Colvin*, ib. 226.

¹⁷ *R. v. Higgins*, 4 C. & P. 247.

it was held he was not liable for penalties as for extortion.¹ But the remedy is available as against tax collectors and overseers.²

On an indictment it is not necessary to prove that the defendant took the exact sum laid. It is for the jury to say whether the excesses were really taken as a fair charge or not.³

There can be no accessories in this offence.⁴

False Imprisonment.

False imprisonment is a misdemeanour at common law.

Every restraint of the liberty of a free man is an imprisonment,⁵ though it be in the high street or elsewhere, and he be not put into any prison or house;⁶ but merely preventing a man from proceeding along a particular way is not,⁷ nor if the person escape before actual arrest.⁸

The officer need not to complete the arrest actually touch the person. If the door of the room in which he is be locked it is sufficient.⁹ Where a warrant has been shewn to a party who goes at the desire of the officer without compulsion, it is an imprisonment.¹⁰ Where a prisoner in custody for a civil offence escapes, if the escape be negligent, the officer may retake him at any time without warrant;¹¹ if voluntary, or the offender be a criminal prisoner, he cannot afterwards be retaken without a new warrant, unless the offence be one for which he might have been arrested originally without warrant,¹² or it be on fresh pursuit.¹³

If a prosecutor fail in proving an imprisonment, he may still prove an assault and battery.¹⁴

Inciting to Commit an Offence.

This is indictable at common law.¹⁵

The offence of soliciting and inciting a man to commit a felony, is, where no such felony is actually committed, a misdemeanour only. Where the felony is committed, it is a felony.¹⁶

To solicit a servant to steal his master's goods is a misdemeanour, though it be not charged in the indictment that the servant stole the

¹ *Edwards v. Salmon*, 23 Q. B. D. 531; 58 L. J. Q. B. 571; 38 W. R. 166.

² See *ante*, pp. 181, 187.

³ *R. v. Gilham*, 6 T. R. 265.

⁴ *R. v. Loggen*, 1 Str. 73.

⁵ 2 Inst. 482.

⁶ Fitz. Bar. 501. As to the practices of "shadowing" and watching premises, see *ante*, p. 188, nn.

⁷ *Bird v. Jones*, 7 Q. B. 742.

⁸ *Russen v. Lucas*, Ry. & M. 26; 1 C. & P. 153.

⁹ *Williams v. Jones*, Ca. temp. Hard. 301.

¹⁰ *Chinn v. Morris*, 2 C. & P. 361; *Pocock v. Moore*, Ry. & M. 321.

¹¹ Dalt. 169.

¹² 2 Hawk. c. 14, s. 9.

¹³ 10 St. Tr. 462.

¹⁴ See *ante*, p. 210. [In S. this is an offence by 1701, c. 6.]

¹⁵ [Same in S.]

¹⁶ *R. v. Gregory*, L. R. 1 C. C. R. 77; 36 L. J. M. C. 60; 16 L. T. 888; 24 & 25 Vict. c. 94, s. 2.

goods, nor that any other act was done than the soliciting and inciting. Such offence is indictable at the sessions, having a tendency to a breach of the peace;¹ and it is no defence that the servant purposely submitted himself to the incitement with intent to betray the inciter.² An attempt to suborn a man to commit perjury is a misdemeanour,³ and so is the mere attempt to solicit a person to attempt to commit an offence,⁴ or to pervert the course of justice by withholding evidence.

Where a defendant is indicted for a misdemeanour committed by the soliciting another to do an act which if done would amount to a felony and render the defendant also guilty of felony, it is unnecessary to negative the doing of the act, for it cannot be intended that a felony has been committed where none is charged.⁵

Where a person uses words or behaviour of or in the presence of another which are calculated to provoke a breach of the peace, he may be summoned before a justice and bound over to keep the peace for a certain time.⁶

But this has been held not to apply to the case of a man going about using insulting words to another.⁷ There must apparently be fear of corporal injury.⁸

Where officers incite persons to commit crimes it is of course a conspiracy.⁹ The incitement which is here chiefly alluded to is that which exists in some other countries of provoking persons to offend against the law that the powers of the law may with some colour be employed against them.

The attempt to force a government reporter into a public meeting would appear to savour of this offence, and so also would the proceedings of officials—usually excise or police—employed to procure convictions where the cause of suspicion is not reasonable.

Perjury.

Perjury consists in the wilful taking a false oath before a Court or person having competent jurisdiction to administer it in reference to a matter then pending in a judicial proceeding, and on a point material to the issue.¹⁰

¹ *R. v. Higgins*, 2 East 5. The practice of "shadowing" must have a similar tendency, and would therefore appear to fall into this category; as also would that of employing powers not *bond fide* but simply *in terrorem*, on account of some motive other than the extortion of money.

² *R. v. Quail*, 4 F. & F. 1076.

³ Referred to in *R. v. Scofield*, Cald. 397.

⁴ *R. v. Ransford*, 13 C. C. 9.

⁵ 1 Stark. Cr. Pl., 148.

⁶ Steph. Comm., 8th ed., 288, vol. iv.; [Macdonald, 1 Wh. 315].

⁷ *Phillips v. JJ. of Gateshead*, L. T. (N.) 19-7-79. In the Met. Pol. Dist. such conduct is subject to a fine, and in default imprisonment: 2 & 3 Vict. c. 47, s. 54.

⁸ 1 Hawk. c. 60, ss. 6, 7; Dalt. c. 116.

⁹ See *ante*, p. 211. Disturbances and even riots have, it is said, been at times fomented by the police. This would constitute misdemeanour or felony on the part of the officers, as the case might be.

¹⁰ See 2 Geo. II. c. 25, s. 2. [The law in S. appears to be the same.]

This and the taking a false oath in a matter not of a judicial nature or where not material are both common law misdemeanours.¹

A false affirmation is punishable in like manner.²

The necessary points to establish are :—

1. The false oath must be taken deliberately and intentionally.³

2. It must be either false in fact, and the defendant swears that he *believes* it to be true :⁴ or true, and he swears to it when he did not know it to be so.⁵

3. The oath must have been taken before a Court or officer having competent jurisdiction to administer it.⁶

4. It must be made in reference to a material part of the matter then under consideration.⁷

Two or more cannot be jointly indicted for this offence.⁸

Some one or more of the assignments must be proved by two witnesses, or by one witness, corroborated by proof of other material and relevant facts,⁹ except where the perjury consists in the defendant having contradicted what he swore on a former occasion, in which case one witness to the defendant's original statement will suffice.¹⁰

Fabrication of evidence when it consists of the procurement of false witnesses is subornation of perjury, and if the party tampered with does not actually take an oath, the person inciting him to do so is still liable to punishment.¹¹ Fabrication in cases other than witnesses is a misdemeanour at common law.¹² Swearing up to a point (which does not exist) in a charge, essential to its establishment, would appear to savour both of fabrication and perjury.

Subornation of perjury is punishable as perjury.¹³

Trespass to Realty.

Trespass to realty is an offence under the criminal law only in the case of forcible entry.

There is no doubt an indictment will lie at common law for a forcible entry, although it is generally brought on the Act of Parliament.¹⁴ In this case there must be proof of such a force as constitutes a public breach of the peace.¹⁵

¹ *R. v. Chapman*, 1 Den. 432; 2 3 C. & K. 236; *R. v. Shaw*, L. & C. 579; C. & K. 846; *R. v. Hadfield*, 55 L. T. 34 L. J. M. C. 169.

789. ² 3 & 4 Will. IV. c. 49.

³ 1 Hawk. c. 69, s. 2.

⁴ *R. v. Pedley*, 1 Leach 327.

⁵ 1 Hawk. c. 69, s. 6.

⁶ 3 Co. Inst. 166; 1 Hawk. c. 69, ss. 3, 4; and see *R. v. Aylett*, 1 T. R. 69, and *R. v. Hughes*, 4 Q. B. D. 614.

⁷ *R. v. Griep*, 1 Ld. Ray. 256; *R. v. Nichol*, 1 B. & Ald. 21.

⁸ *R. v. Phillips*, 2 Str. 921.

⁹ *R. v. Boulter*, 21 L. J. M. C. 57;

¹⁰ *R. v. Knill*, 5 B. & Ald. 529, n.

¹¹ Hawk. P. C. I. c. 69, s. 2; [*Baillie*, 1 S. 368].

¹² *R. v. Vreones*, 1891, 1 Q. B. 360; 39 W. R. 364; 60 L. J. 62. See *Crim. Code Com. Report*, p. 21.

¹³ Arch., 19th ed., p. 887.

¹⁴ *Per Wilmot, J.*; *R. v. Bake*, 3 Burr. 1731; 5 Ric. II. c. 8; 8 Hen. VI. c. 9; 21 Jac. I. c. 15. [In S. this appears to be an offence at common law. See also 29 Geo. III. c. 46.]

¹⁵ *R. v. Wilson*, 8 T. R. 357.

An entry by breaking the doors or windows whether any person be in the house or not, especially if it be a dwelling-house, or where personal violence is done to the prosecutor or any of his family or servants or caretakers, or when it is accompanied with such threats of personal violence that it is calculated to prevent the prosecutor from defending his possession, has been held within the statute.¹ A mere trespass is not sufficient. There must be some shew of force calculated to prevent resistance.²

Where the party has no right of entry, all persons in his company, as well those who do not use violence as those who do are equally guilty; but if he have a right of entry, then only those who use or threaten violence or actually abet those who do, are guilty.³ And where the defendants broke and entered the plaintiff's house to prevent him murdering his wife, they were held justified.⁴

¹ 1 Hawk. c. 64, ss. 20, 21, 26, 27.

² *R. v. Smyth*, 5 C. & P. 201.

³ 3 Bac. Abr. Forc. Ent. (B).

⁴ *Handcock v. Baker*, 2 B. & P. 260.

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sheriff

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Admiralty marshal

sheriff

tipstaff

gaoler

}	As to powers, see under these officers respectively.
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sheriff

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Admiralty marshal

}	As to powers, see under these officers respectively.
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Queen's messenger
post officers
minister, churchwarden and overseers
sheriff
high bailiff
constables
customs
excise
taxes
gaoler

As to powers, see under these officers respectively.

2. Local, England:—

tipstaff
high bailiff
constables
gaolers
overseers
highway surveyors
weights inspectors
water bailiffs
overseers
district surveyors
local officers

As to powers, see under these officers respectively.

Local, Scotland:—

sheriff's officer
constables
gaolers
poor inspector
rate collector
local officers
road surveyor
explosives inspectors
weights inspectors
water bailiff

As to powers, see under these officers respectively.

Local, Ireland:—

sheriff
constables
gaolers
weights inspectors
explosives inspectors
rate collector
tipstaff
water bailiff

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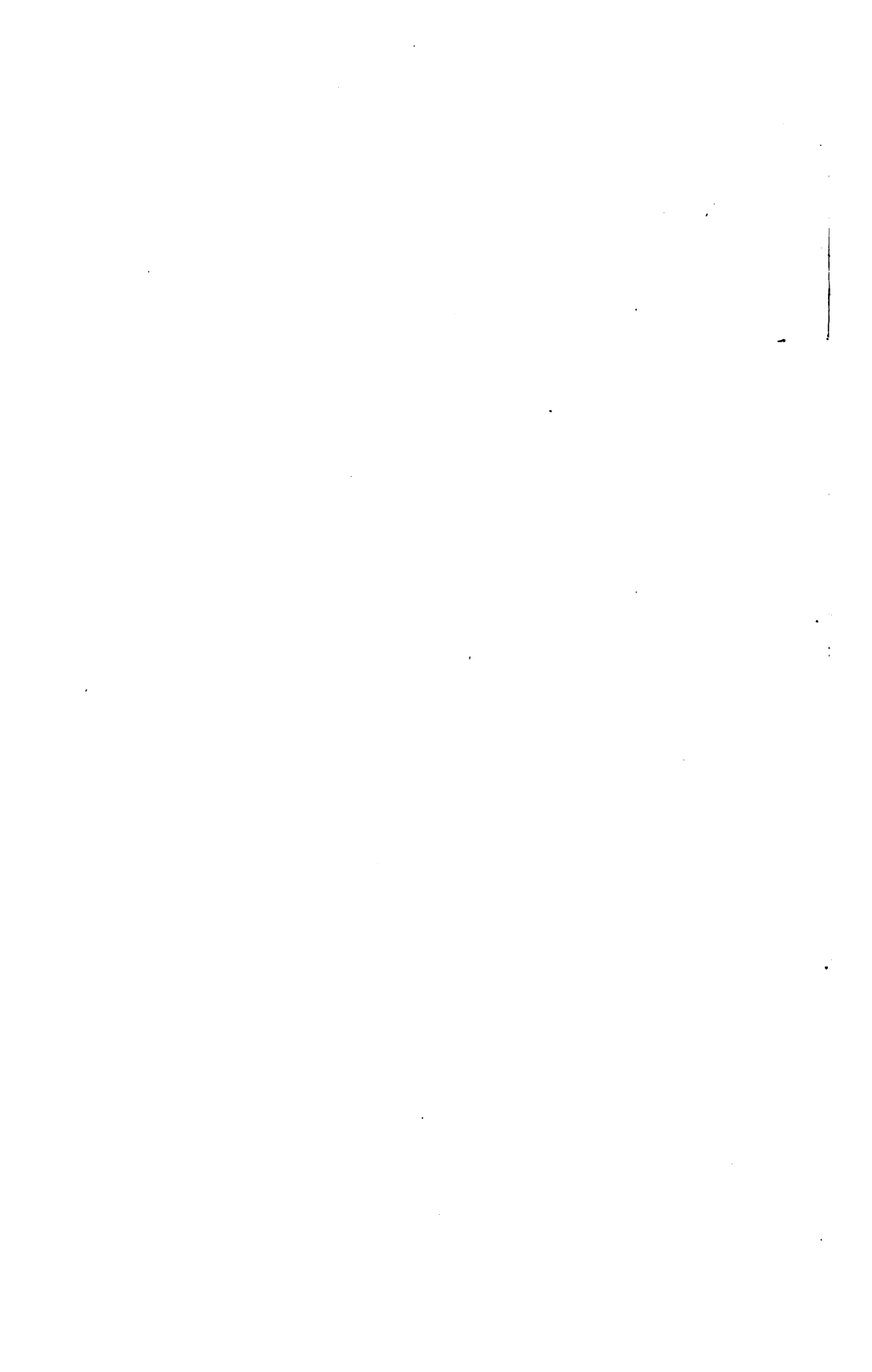
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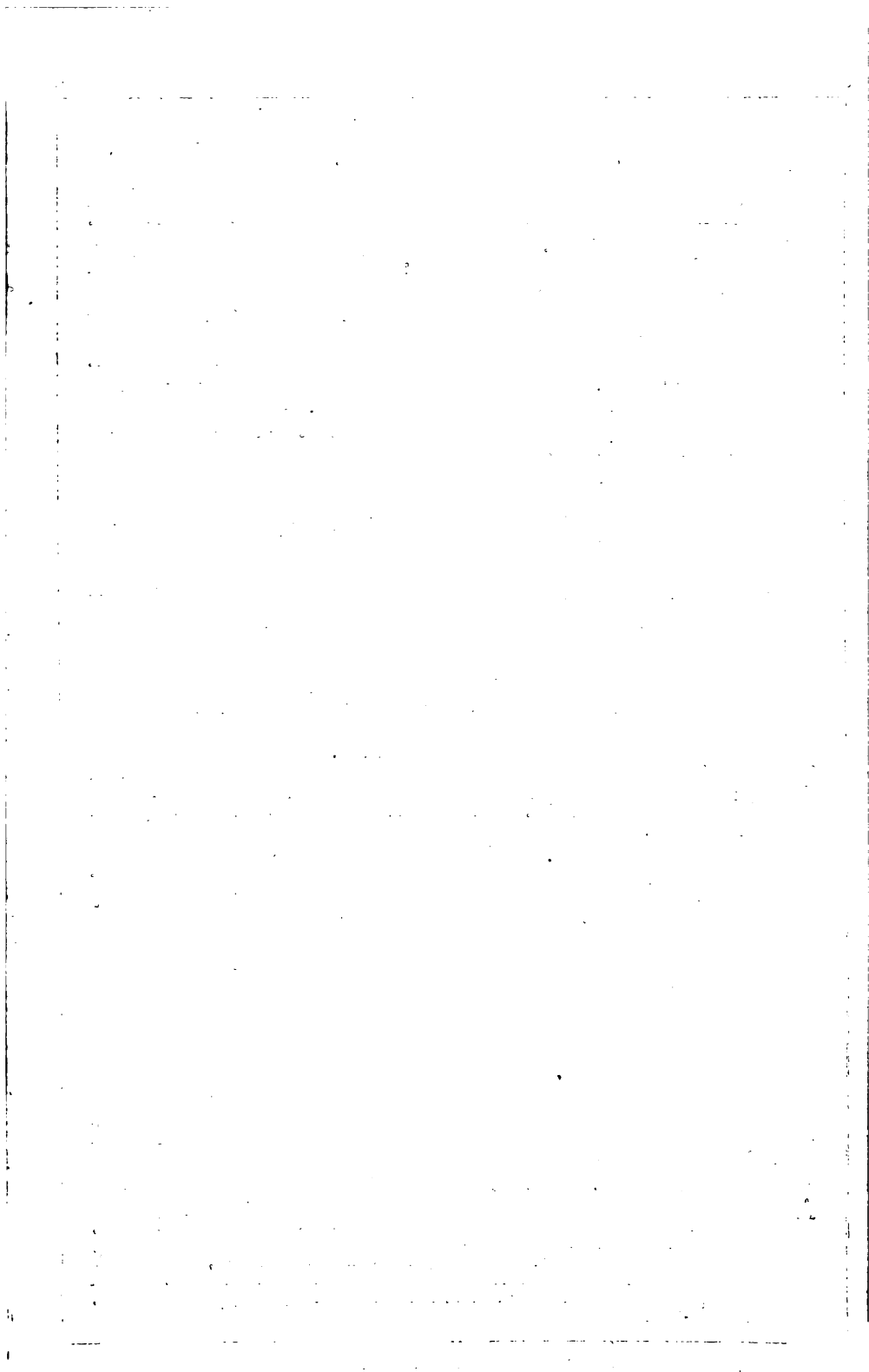
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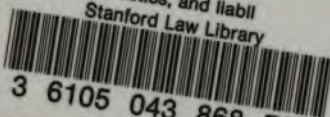
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